

### **340-252-0230 Written Comments**

(1) In accordance with 40 CFR 93.122(a)(4)(ii), prior to making a conformity determination on the transportation plan or TIP, a Metropolitan Planning Organization or the Oregon Department of Transportation may not include emissions reduction credits from any control measures that are not included in the transportation plan or TIP and that do not require a regulatory action in the regional emissions analysis unless the Metropolitan Planning Organization, Oregon Department of Transportation or Federal Highway Administration/Federal Transit Administration obtains written commitments, as defined in 40 CFR 93.101, from the appropriate entities to implement those control measures. The written commitments to implement those control measures must be fulfilled by the appropriate entities.

(2) In accordance with 40 CFR 93.125(c), prior to making a project-level conformity determination for a transportation project, the Federal Highway Administration/Federal Transit Administration must obtain from the project sponsor or operator written commitments, as defined in 40 CFR 93.101, to implement any project-level mitigation or control measures in the construction or operation of the project identified as conditions for NEPA process completion. The written commitments to implement those project-level mitigation or control measures must be fulfilled by the appropriate entities. Prior to making a conformity determination on the transportation plan or TIP a Metropolitan Planning Organization or Oregon Department of Transportation must ensure any project-level mitigation or control measures are included in the project design concept and Scope and are appropriately identified in the regional emissions analysis. Prior to making a project-level conformity determination, written commitments must be obtained before such mitigation or control measures are used in a project-level hot-spot analysis.

*State effective: 3/5/2010; EPA effective: 11/5/2012; 77 FR 60627*

## **DIVISION 256**

### **MOTOR VEHICLES**

#### **340-256-0010 Definitions**

The definitions in OAR 340-200-0020, 340-204-0010, and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies to this division.

- (1) "Basic test" means an inspection and maintenance program designed to measure exhaust emission levels during an unloaded idle or an unloaded raised idle mode as described in OAR 340-256-0340.
- (2) "Carbon dioxide" means a compound consisting of the chemical formula (CO<sub>2</sub>).
- (3) "Carbon monoxide" means a compound consisting of the chemical formula (CO).
- (4) "Certificate of Compliance" means a hard copy or electronic certification issued by a Private Business Fleet, a Public Agency Fleet Vehicle Emission Inspector, a Vehicle Emissions Inspector employed by the Department of Environmental Quality, or an Independent Contractor that the vehicle identified on the certificate is equipped with the required functioning motor vehicle pollution control systems and otherwise complies with the Commission's emission control criteria, standards, and rules.
- (5) "Certified Repair Facility" means an automotive repair facility possessing a current and valid certificate issued by the Department that employs automotive technicians certified by the Department's Automotive

Technician Emission Training Program (ATETP).

(6) "Clean-Screening" means a procedure by which the Department determines that a vehicle has acceptable emissions and then allows the vehicle owner to bypass the traditional centralized emissions inspection station test. The Department's decision may be the result of remotely sensing the emissions, the status of emissions equipment, or another means determined by the Department.

(7) "Commission" means the Environmental Quality Commission.

(8) "Crankcase emissions" means substances emitted directly to the atmosphere from any opening leading to the crankcase of a motor vehicle engine.

(9) "Dealer" means any person who is engaged wholly or in part in the business of buying, selling, or exchanging, either outright or on conditional sale, bailment lease, chattel mortgage: or otherwise, motor vehicles. .

(10) "Dealership" means a business involved in the sale of vehicles that is franchised with an automobile manufacturer as defined in ORS 650.120(1).

(11) "Department" means the Department of Environmental Quality.

(12) "Diesel motor vehicle" means a motor vehicle powered by a compression-ignition internal combustion engine.

(13) "Director" means the director of the Department.

(14) "DMV" means the Driver and Motor Vehicle Division of the Oregon Department of Transportation.

(15) "Electric vehicle" means a motor vehicle that uses a propulsive unit powered exclusively by electricity.

(16) "Emissions Inspection Station" means an inspection facility, operated by the Department of Environmental Quality or an Independent Contractor, for the purpose of conducting emissions inspections of all vehicles required to be inspected pursuant to this Division.

(17) "Enhanced test" means an inspection and maintenance program designed to measure exhaust and fuel evaporative system emissions levels using a loaded transient driving cycle and other measurement techniques as described in OAR 340-256-0350.

(18) "Exhaust emissions" means substances emitted into the atmosphere from any opening downstream from the exhaust ports of a motor vehicle engine.

(19) "Factory-installed motor vehicle pollution control system" means a motor vehicle pollution control system installed by the vehicle or engine manufacturer to comply with United States motor vehicle emission control laws and regulations.

(20) "Gas analytical system" means a device that measures the amount of contaminants in the exhaust emissions of a motor vehicle, and that has been issued a license by the Department pursuant to OAR 340-256-0450 and ORS 468A.380.

(21) "Gaseous fuel" means, but is not limited to, liquefied petroleum and natural gases in liquefied or gaseous forms.

(22) "Gasoline motor vehicle" means a motor vehicle powered by a spark-ignition internal combustion engine.

- (23) "GPM" means Grams Per Mile.
- (24) "Gross vehicle weight rating" or "GVWR" means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.
- (25) "Heavy duty motor vehicle" means any motor vehicle rated at more than 8500 pounds GVWR or that has an actual vehicle curb weight as delivered to the ultimate purchaser of 6000 pounds or over.
- (26) "Hydrocarbon gases" means a class of chemical compounds consisting of hydrogen and carbon.
- (27) "Idle speed" means the unloaded engine speed when accelerator pedal is fully released.
- (28) "Independent Contractor" means any person with whom the Department enters into an agreement providing for the construction, equipment, maintenance, personnel, management or operation of emissions inspection stations or activities pursuant to ORS 468A.370.
- (29) "Inspection and Maintenance Program (I/M) means a program of conducting regular inspections of motor vehicles, including measurement of air contaminants in the vehicle exhaust and an inspection of emission control systems, to identify vehicles that do not meet the standards of this Division or that have malfunctioning, maladjusted or missing emission control systems, and, when necessary, of requiring the repair or adjustment of vehicles to make the emission control systems function as intended and to reduce tailpipe emissions of air contaminants.
- (30) "In-use motor vehicle" means any motor vehicle that is not a new motor vehicle.
- (31) "Light-duty motor vehicle" means any motor vehicle rated at 8500 pounds GVWR or less and has an actual vehicle curb weight as delivered to the ultimate purchaser of under 6000 pounds.
- (32) "Medford-Ashland Air Quality Maintenance Area (AQMA)" has the meaning given in OAR 340-204-0010.
- (33) "Model year" means the annual production period of new motor vehicles or new motor vehicle engines designated by the calendar year in which such period ends. If the manufacturer does not designate a production period, the model year with respect to such vehicles or engines means the 12-month period beginning January of the year in which production thereof begins.
- (34) "Motorcycle" means any motor vehicle, including mopeds, having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground and having a mass of 680 kilograms (1500 pounds) or less with manufacturer recommended fluids and nominal fuel capacity included.
- (35) "Motor vehicle" means any self-propelled vehicle used for transporting persons or commodities on public roads.
- (36) "Motor vehicle pollution control system" means equipment designed for installation on a motor vehicle for the purpose of reducing the pollutants emitted from the vehicle, or a system or engine adjustment or modification that causes a reduction of pollutants emitted from the vehicle, or a system or device that inhibits the introduction of fuels that can adversely affect the overall motor vehicle pollution control system.
- (37) "Motor Vehicle Fleet Operation" means ownership, control, or management or any combination thereof by any person of five or more motor vehicles.
- (38) "New motor vehicle" means a motor vehicle whose equitable or legal title has never been transferred to a

person who in good faith purchases the motor vehicle for purposes other than resale.

(39) "Noise level" means the sound pressure level measured by use of metering equipment with an "A" frequency weighting network and reported as dBA.

(40) "OBD" means the On Board Diagnostic system in a vehicle that tracks the effectiveness of the vehicle's emissions control systems. These OBDII (or higher systems) have typically been placed on 1996 and newer motor vehicles.

(41) "OBD Test" means an emissions related test in which the vehicle's On Board Diagnostic computer is downloaded, supplying diagnostic information to evaluate the effectiveness of the vehicle emissions control systems.

(42) "On-Site Vehicle Test" means an emissions related test that is conducted at the vehicle owner's location. Such test will be performed by DEQ using DEQ's test equipment and is only available as a service for automobile dealerships.

(43) "Owner" means the person having all the incidents of ownership in a vehicle. Where the incidents of ownership are in different persons, it means the person, other than a security interest holder or lessor, entitled to the possession of a vehicle under a security agreement or a lease for a term of ten or more successive days.

(44) "Opacity" means the degree to which transmitted light is obscured, expressed in percent.

(45) "Oxides of Nitrogen" or NO<sub>x</sub> means oxides of nitrogen except nitrous oxides.

(46) "Person" means any individual, public or private corporation, political subdivision, agency, board, department, or bureau of the state, municipality, partnership, association, firm, trust, estate, or any other legal entity whatsoever that is recognized by law as the subject of rights and duties.

(47) "Portland Vehicle Inspection Area" has the meaning given in OAR 340-204-0010.

(48) "PPM" means parts per million by volume.

(49) "Private Business Fleet" means ownership by any person of 100 or more Oregon-registered, in-use, motor vehicles, excluding those vehicles held primarily for the purpose of resale.

(50) "Private Business Fleet Vehicle Emissions Inspector" means any person employed on a full-time basis by a Private Business Fleet that possesses a current and valid license issued by the Department pursuant to OAR 340-256-0440 and ORS 468A.380.

(51) "Propulsion exhaust noise" means that noise created in the propulsion system of a motor vehicle that is emitted into the atmosphere from any opening downstream from the exhaust ports. This definition does not include exhaust noise from vehicle auxiliary equipment such as refrigeration units powered by a secondary motor.

(52) "Public Agency Fleet, means ownership of 50 or more government-owned vehicles registered pursuant to ORS 805.040.

(53) "Public Agency Fleet Vehicle Emissions Inspector" means any person employed on a full-time basis by a Public Agency Fleet that possesses a current and valid license issued by the Department pursuant to OAR 340-256-0440 and ORS 468A.380.

(54) "Public roads" means any street, alley, road, highway, freeway, thoroughfare, or section thereof used by the

public or dedicated or appropriated to public use.

(55) "Regional Authority" means a regional air quality control authority established under the provisions of ORS 468A.005 to 468A.035, 468A.075, 468A.100 to 468A.130, and 468A.140 to 468A.175.

(56) "Remote Sensing" means a technique for determining the level of a vehicle's emissions without connecting equipment directly to the vehicle. The vehicle's emissions can be determined by either optically measuring the pollutants in the vehicle's exhaust plume, by remotely receiving a vehicle's emissions diagnostic information, or by other means determined by the Department.

(57) "Ringlemann Smoke Chart" means the Ringlemann Smoke Chart with instructions for use as published in May, 1967, by the U.S. Department of Interior, Bureau of Mines.

(58) "RPM" means engine crankshaft revolutions per minute.

(59) "Self-Service Test Lane" means a technique for vehicle testing offered by the Department where the vehicle owner or representative can perform an emissions test on the vehicle at a facility provided by the Department using remote sensing, plug-in OBD emissions testing, or other means designated by the Department.

(60) "Two-stroke cycle engine" means an engine in which combustion occurs, within any given cylinder, once each crankshaft revolution.

(61) "Vehicle Emission Inspector" means any person employed by the Department or an Independent Contractor that possesses a current and valid license issued by the Department pursuant to OAR 340-256-0440 and ORS 468A.380.

(62) "Visible Emissions" means those gases or particulates, excluding uncombined water, that separately or in combination are visible upon release to the outdoor atmosphere.

*State effective: 7/12/2005; EPA effective: 1/18/2012; 76 FR 78571*

## VISIBLE EMISSIONS

### **340-256-0100 Visible Emissions -- General Requirements, Exclusions**

(1) No person may operate, drive, or cause or permit to be driven or operated any motor vehicle upon a public street or highway that emits into the atmosphere any visible emission.

(2) Excluded from this rule are those motor vehicles:

(a) Powered by compression ignition or diesel cycle engines;

(b) Excluded by written order of the Department by ORS 468A.075.

(3) No person may operate, drive, or cause or permit to be driven or operated any motor vehicle upon a public street or highway if any element of the factory-installed motor vehicle pollution control system has been modified or altered in such a manner that decreases its efficiency or effectiveness in controlling air pollution in violation of ORS 815.305, except as noted in ORS 815.305(2).

*State effective: 7/12/2005; EPA effective: 1/18/2012; 76 FR 78571*

### **340-256-0130 Motor Vehicle Fleet Operation**

(1) Motor vehicle fleet operation records pertaining to observations, tests, maintenance, and repairs performed to control or reduce visible emissions from individual motor vehicles must be available for review and inspection by

the Department.

(2) The Department, by written notice, may require any motor vehicle of a motor vehicle fleet operation to be tested for compliance with OAR 340-256-0100 and 340-256-0110.

(3) A regional authority, within its territory, may perform the functions of the Department as set forth in sections (1) and (2) of this rule, upon written directive of the Department permitting such action.

*State effective: 7/12/2005; EPA effective: 1/18/2012; 76 FR 78571*

## CERTIFICATION OF POLLUTION CONTROL SYSTEMS

### **340-256-0200 County Designations**

Pursuant to the requirements of ORS 468A.360, Clackamas, Columbia, Jackson, Marion, Multnomah, Washington and Yamhill counties are hereby designated by the Environmental Quality Commission as counties in which all motor vehicles registered therein, unless otherwise exempted by statute or by rules subsequently adopted by the Commission, shall be equipped with a motor vehicle pollution control system and shall comply with motor vehicle emission standards adopted by the Commission.

*State effective: 10/14/1999; EPA effective: 1/21/2005; 69 FR 67819*

## EMISSION CONTROL SYSTEM INSPECTION

### **340-256-0300 Scope**

Pursuant to ORS 467.030, 468A.350 to 468A.400, 803.350, and 815.295 to 815.325, OAR 340-256-0300 through 340-256-0465 establish the criteria, methods, and standards for inspecting motor vehicles to determine eligibility for obtaining a Certificate of Compliance or inspection. Any person subject to these rules must obtain a Certificate of Compliance as required under ORS 803.350. Any person seeking an exemption from the inspection requirements of this rule must prepare and submit to the Department or DMV a statement describing the grounds for the exemption on forms as provided by the Department or DMV.

(1) Except as provided in sections (3) and (4) of this rule, any person owning or leasing 1975 and newer model year vehicles in the Portland Vehicle Inspection Area must ensure the vehicles meet the requirements of one of the following emission tests:

(a) Basic test. A light duty vehicle of the model years specified in this paragraph must meet the basic test requirements of OAR 340-256-0340, 340-256-0380, 340-256-0400, and 340-256-0430.

(A) Until July 1, 2005, model years 1975 through 1980;

(B) Beginning July 1, 2005 and until July 1, 2006, model years 1975 through 1988;

(C) Beginning July 1, 2006 and until January 1, 2007, model years 1975 through 1992;

(D) Beginning January 1, 2007, model years 1975 through 1995.

(b) Enhanced Test. A light duty vehicle of the model years specified in this paragraph must meet the enhanced test requirements of OAR 340-256-0350 and 340-256-0410. These vehicles found to be safe but unable to be dynamometer tested due to drive line configuration and these vehicles equipped with All Wheel Drive (AWD) will meet the basic test requirements of OAR 340-256-0340, 340-256-0380, 340-256-6400, and 340-256-0430.

(A) Until July I, 2005, model years 1981 through 1995;

(B) Beginning July 1, 2005 and until July 1, 2006, model years 1989 through 1995;

(C) Beginning July 1, 2006 and until January 1, 2007, model years 1993 through 1995;

(D) Beginning January 1, 2007, no vehicles will be required to meet the enhanced test requirements of OAR 340-256-0350 and 340-256-0410.

(c) A light duty vehicle that is a 1996 and newer model year must meet the OBD test requirements of OAR 340-256-0355. For those vehicles that cannot be OBD tested due to manufacturer defects in the vehicle (where EPA has not issued an associated recall), vehicle incompatibility with the OBD test system, or other similar manufacturing problems, the vehicle must meet either the enhanced test requirements of OAR 340-256-0350 and 340-256-0410, the basic test requirements of OAR 340-256-0340, 340-356-0380, 340-256-0400, or other test criteria as determined by the department.

(d) A heavy duty vehicle must meet the basic test requirements of OAR 340-256-0340, 340-256-0390, and 340-256-0420, except gasoline powered heavy duty vehicles equipped with OBDII or higher systems must meet the OBD test requirements of OAR 340-256-0355. For those vehicles that cannot be OBD tested due to manufacturer defects in the vehicle (where EPA has not issued an associated recall), vehicle incompatibility with the OBD test system, or other similar manufacturing problems, the vehicle must meet either the enhanced test requirements of OAR 340-256-0350 and 340-256-0410, the basic test requirements of OAR 340-256-0340, 340-356-0380, 340-256-0400, or other test criteria as determined by the Department.

(2) Except as provided in section (3) of this rule, any person owning or leasing vehicles that are up to 20 model years in age in the Medford-Ashland Air Quality Maintenance Area must ensure the vehicles meet the requirements of one of the following emission tests:

(a) A light duty vehicle that is a 1996 and newer model year must meet the OBD test requirements of OAR 340-256-0355. For those vehicles that cannot be OBD tested due to manufacturer defects in the vehicle (where EPA has not issued an associated recall), vehicle incompatibility with the OBD test equipment, or other similar manufacturing problems, the vehicle must meet the basic test requirements of OAR 340-256-0340, 340-256-0380, 340-256-0400, and 340-256-0430 or other test criteria as determined by the Department.

(b) A light-duty vehicle that is 20 model years in age through 1995 model year must meet the basic test requirements of OAR 340-256-0340, 340-256-0380, 340-256-0390, 340-256-0400, and 340-256-0420.

(c) A heavy duty vehicle must meet the basic test requirements of OAR 340-256-0340, 340-256-0390, and 340-256-0420. All gasoline powered heavy duty vehicles equipped with OBDII or higher systems must meet the OBD test requirements of OAR 340-256-0355. For those vehicles that cannot be OBD tested due to manufacturer defects in the vehicle (where EPA has not issued an associated recall), vehicle incompatibility with the OBD test equipment, or other similar manufacturing problems, the vehicle must meet the basic test requirement of OAR 340-256-0340, 340-256-0380, 340-256-0400, and 340-256-0430 or other test criteria as determined by the Department.

(3) The Department may test any gasoline powered heavy duty or light duty vehicle using one of the following procedures as an alternative to the test procedure otherwise required by this rule:

(a) Clean-Screen Testing following the procedures of OAR 340-256-0357; or

(b) Self-Service Testing following the procedures of OAR 340-256-0358.

(4) Vehicle owners may apply for a waiver from the enhanced test requirements in section (1)(b) of this rule and OAR 340-256-0350. Vehicle owners are eligible in the year 2000 if their net household income is less than or

equal to that established by multiplying the year 2000 Federal Poverty Guideline amounts by 1.3. For each year after the year 2000, the calculated year 2000 numbers are adjusted using the Oregon Consumer Price Index for the Portland Metro Regional Area. The Department may require proof of eligibility and vehicle ownership. Providing false information may result in revocation of the low income waiver. If the Department approves the waiver, the owner must pass the basic motor vehicle emissions test requirement in OAR 340-256-0300(1)(a) and 340-256-0340 and pay the required fees in order to receive a certificate of compliance.

*State Effective: 7/12/2005; EPA effective: 1/18/2012; 76 FR 78571*

### **340-256-0310 Government-Owned Vehicle, Permanent Fleet Vehicle and United States Government Vehicle Testing Requirements**

- (1) All motor vehicles registered as government-owned vehicles under ORS 805.040 that are required to be certified pursuant to ORS 815.300 must, as means of that certification, obtain a Certificate of Compliance. Government-owned vehicles must be certified biennially.
- (2) All motor vehicles registered as permanent fleet vehicles under ORS 805.120 that are required to be certified pursuant to ORS 803.350 and 815.295 to 815.325 must, as means of that certification, obtain a Certificate of Compliance.
- (3) Any motor vehicle that is to be registered under ORS 805.040 or 805.120 but is not a new motor vehicle must have a Certificate of Compliance issued to it before it is registered, as required by ORS 803.350 and 815.295 to 815.325.
- (4) All motor vehicles owned by the United States Government and operated in the Portland Vehicle Inspection Area or the Medford-Ashland Air Quality Maintenance Area (AQMA) must have a Certificate of Compliance issued to it biennially.
  - (a) United States Government tactical military vehicles are not required to be certified.
  - (b) Federal installations located within the Portland Area Vehicle Inspection Program and the Medford-Ashland AQMA must provide a listing to the Department of all federal employee-owned vehicles operated on the installation and demonstrate that these vehicles have complied with this Division. Inspection results must be reported to the Department on a quarterly basis, and the list must be updated annually.
- (5) For the purposes of providing a staggered certification schedule for vehicles registered as government-owned vehicles under ORS 805.040 or permanent fleet vehicles under ORS 805.120, such schedule must, except as provided by section (6) of this rule, be on the basis of the final numerical digit contained on the vehicle license plate. Such certification must be completed by the last day of the month as provided below (last digit and month or year, respectively):
  - (a) 1 --January;
  - (b) 2 -- February;
  - (c) 3 --March;
  - (d) 4 -- April;
  - (e) 5 - May;
  - (f) 6 -- June;
  - (g) 7 -- July;

- (h) 8 - August;
- (i) 9 -- September;
- (j) 0 --October;
- (k) Even-- even numbered years for vehicles that are tested biennially;
- (l) Odd-- odd numbered years for vehicles that are tested biennially.

(6) In order to accommodate a fleet's scheduled maintenance practices, the department may establish a specific separate schedule for vehicles registered as government-owned vehicles under ORS 805.040 or permanent fleet vehicles under ORS 805.120 if these vehicles are owned by a Public Agency Fleet or Private Business Fleet licensed under OAR 340-256-0440.

(7) Every agency or organization owning vehicles described in this rule must report the following information to the Department, in either electronic or printed form, annually:

- (a) The vehicle make;
- (b) The vehicle model;
- (c) The vehicle identification number (VIN);
- (d) The number of Certificates of Compliance issued; and
- (e) The date on which the motor vehicles were issued Certificates of Compliance.

*State Effective: 7/12/2005; EPA effective: 1/18/2012; 76 FR 78571*

### **340-256-0330 Department of Defense Personnel Participating in the Privately Owned Vehicle Import Control Program**

(1) U.S. Department of Defense (DOD) personnel participating in the DOD Privately Owned Vehicle (POV) Import Control Program operating a 1975 or newer model year vehicle, are exempt from the prohibition of ORS 815.305 insofar as it pertains to catalytic converter systems, and, if applicable, exhaust gas oxygen (O<sub>2</sub>) sensor(s), if one of the following conditions is met:

- (a) The vehicle will be driven to the port and surrendered for export under the above program within ten working days of disconnection, deactivation, or inoperability of the catalytic converter system or exhaust gas oxygen (O<sub>2</sub>) sensor(s); or
- (b) The reconnection, reactivation, or reoperability of the catalytic converter systems and exhaust gas oxygen (O<sub>2</sub>) sensor(s), is made within 10 working days from the time the owner picked up the vehicle at the port.

(2) Persons disconnecting, deactivating or rendering inoperable any catalytic converter system or exhaust gas oxygen (O<sub>2</sub>) sensor(s) on 1975 or newer model year vehicle of DOD personnel participating in the DOD POV Import Control Program which will be driven to the port and surrendered for exportation under said program within ten working days are exempt from the prohibition of ORS 815.305.

(3) Unless otherwise exempt under this Division, vehicles must be configured as a vehicle certified by the EPA for sale and use within the United States pursuant to **40 CFR, part 86, subpart A.**

(4) Documentation shall be kept with the vehicle at all times while the vehicle is operated in the United States which provides sufficient information to demonstrate compliance with all appropriate qualifications and conditions of this exemption, including the following:

- (a) The unique vehicle identification number (VIN) of the subject vehicle;
- (b) The agency or organization which employs the owner of the subject vehicle;
- (c) The country to which the owner of the subject vehicle is being transferred;
- (d) The date(s) when applicable alterations were performed on the subject vehicle;
- (e) The date when the subject vehicle is scheduled to be delivered to the appropriate port for shipment out of the United States; and
- (f) The date when the subject vehicle is picked up from the port of importation upon returning to the United States.

*State effective: 10/14/1999; EPA effective: 1/21/2005; 69 FR 67819*

### **340-256-0340 Light Duty Motor Vehicle and Heavy Duty Gasoline Motor Vehicle Emission Control Test Method for Basic Program**

#### **(1) General Requirements:**

- (a) Vehicles having coolant, oil or fuel leaks or any other such defect that is unsafe to allow the emission test to be conducted must be rejected from the testing area. The Inspector may not conduct the emissions test until the defects are corrected.
- (b) The vehicle transmission must be placed in neutral gear if equipped with a manual transmission or in park position if equipped with an automatic transmission. The hand or parking brake must be engaged. If the brake is defective, then wheel chocks must be placed in front of or behind the vehicle's tires, or both when appropriate.
- (c) All accessories are to be turned off.
- (d) The Inspector must insure that the motor vehicle is equipped with the required functioning motor vehicle pollution control system in accordance with the criteria of OAR 340-256-0380 or 340-256-0390. For vehicles not meeting this criteria upon completion of the testing process, the Inspector must issue a report to the driver stating all reasons for noncompliance.
- (e) Exhaust gas sampling algorithm. The analysis of exhaust gas concentrations will begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations will be analyzed at a rate of two times per second. The measured value for pass/fail determinations will be a simple running average of the measurements taken over five seconds.
- (f) Pass/fail determinations. A pass or fail determination will be made for each applicable test mode based on a comparison of the applicable standards listed in OAR 340-256-0400 and 340-256-0420 and the measured value for HC and CO and described in subsection (1)(a) of this rule. A vehicle will pass the test mode if any pair of simultaneous values for HC and CO are below or equal to the applicable standards. A vehicle will fail the test mode if the values for either HC or CO or both, in all simultaneous pairs of values are above the applicable standards.

(g) Void test conditions. If the measured concentration of CO plus C02 falls below the applicable standards listed in OAR 340-256-0380 and 340-256-0390, or if the vehicle's engine stalls at any time during the test sequence, the

test will end, and any exhaust gas measurements will be voided.

(h) Multiple exhaust pipes. Exhaust gas concentrations from vehicle engines equipped with multiple exhaust pipes will be sampled simultaneously.

(i) The test will be terminated upon reaching the overall maximum test time.

(2) Test sequence.

(a) The test sequence will consist of a first-chance test and a second chance test as follows:

(A) The first-chance test, as described in section (3) of this rule, will consist of an idle mode followed by a high-speed mode.

(B) The second-chance high-speed mode, as described in section (3) of this rule, will immediately follow the first-chance high-speed mode. It will be performed only if the vehicle fails the first-chance test. The second-chance idle mode, as described in section (4) of this rule, will follow the second chance high speed mode and be performed only if the vehicle fails the idle mode of the first-chance test.

(b) The test sequence will begin only after the following requirements are met:

(A) The vehicle will be tested in as-received condition with the transmission in neutral or park and all accessories turned off. The engine will be at normal operating temperature (as indicated by a temperature gauge, temperature lamp, touch test on the radiator hose, or other visual observation for overheating).

(B) The tachometer will be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(C) The sample probe will be inserted into the vehicle's tailpipe to a minimum depth of 10 inches. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension will be used.

(D) The measured concentration of CO plus CO<sub>2</sub> will be greater than or equal to the applicable standards listed in OAR 340-256-0380 and 340-256-0390.

(3) First-chance test and second-chance high-speed mode. The test timer will start ( $t_t=0$ ) when the conditions specified in section (2)(b) of this rule are met. The first-chance test and second-chance high-speed mode will have an overall maximum test time of 390 seconds ( $t_t=390$ ). The first-chance test will consist of an idle mode followed immediately by a high-speed mode. An additional second chance high-speed mode will follow immediately, if necessary.

(a) First-chance idle mode.

(A) Except for diesel vehicles, the mode timer will start ( $m_t=0$ ) when the vehicle engine speed is between 550 and 1300 rpm. If engine speed exceeds 1300 rpm or falls below 550 rpm, the mode timer will reset to zero and resume timing. The minimum idle mode length will be determined as described in section (3)(a)(B) of this rule. The maximum idle mode length will be 30 seconds ( $m_t=30$ ) elapsed time.

(B) The pass/fail analysis will begin after an elapsed time of 10 seconds ( $m_t=10$ ). A pass or fail determination will be made for the vehicle, and the mode will be terminated as follows:

(i) If, before an elapsed time of 30 seconds ( $m_t=30$ ), measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and 340-256-0420, the vehicle will pass the idle mode, and the mode will be terminated.

(ii) The vehicle will fail the idle mode and the mode will be terminated if the provisions of section (3)(a)(B)(i) of this rule are not satisfied within an elapsed time of 30 seconds (mt=30). .

(iii) The vehicle may fail the first-chance and second-chance test will be omitted if no exhaust gas concentration less than 1800 ppm HC is found by an elapsed time of 30 seconds (mt=30).

(b) First-chance and second-chance high-speed modes. This mode includes both the first-chance and second-chance high-speed modes and follows immediately upon termination of the first-chance idle mode.

(A) Except for diesel vehicles, the mode timer will reset (mt=0) when the vehicle engine speed is between 2200 and 2800 rpm. If engine speed falls below 2200 rpm or exceeds 2800 rpm for more than two seconds in one excursion or more than six seconds, over all excursions within 30 seconds of the final measured value used in the pass/fail determination, the measured value will be invalidated and the mode continued. If any excursion lasts for more than ten seconds, the mode timer will reset to zero (mt=0) and timing resumed. The minimum high-speed mode length will be determined as described under paragraphs (3)(b)(B) and (C) of this rule. The maximum high-speed mode length will be 180 seconds (mt= 180) elapsed time.

(B) Ford Motor Company and Honda vehicles. For 1981-1987 model year Ford Motor Company vehicles and 1984-1985 model year Honda Preludes, the pass/fail analysis will begin after an elapsed time of 10 seconds (mt= 10) using the following procedure.

(i) A pass or fail determination, as described below, will be used, for vehicles that passed the idle mode, to determine whether the high-speed test should be terminated before or at the end of an elapsed time of 180 seconds (mt=180).

(I) If, before an elapsed time of 30 seconds (mt=30), the measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and 340-256-0420, the vehicle will pass the high-speed mode, and the test will be terminated.

(II) Restart. If at an elapsed time of 30 seconds (mt=30) the measured values are greater than the applicable standards listed in OAR 340-256-0400 and 340-256-0420, the vehicle's engine will be shut off for not more than 10 seconds after returning to idle and then will be restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. The mode timer will stop upon engine shut off (mt=30) and resume upon engine restart. The pass/fail determination will resume as follows after 40 seconds have elapsed (mt=40).

(III) If, at any point between an elapsed time of 40 seconds (mt=40) and 60 seconds (mt=60), the measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and 340-256-0420, the vehicle will pass the high-speed mode, and the test will be terminated.

(IV) If, at a point between an elapsed time of 60 seconds (mt=60) and 180 seconds (mt=180), both HC and CO emissions continue to decrease and measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 or 340-256-0420, the vehicle will pass the high-speed mode, and the test will be terminated.

(V) If neither of sections (3)(b)(B)(i)(I), (III) or (IV) of this rule is satisfied by an elapsed time of 180 seconds (mt= 180), the vehicle will fail the high-speed mode, and the test will be terminated. (ii) A pass or fail determination will be made for vehicles that fail the idle mode and the high-speed mode terminated at the end of an elapsed time of 180 seconds (mt=180) as follows:

(V -a) The vehicle will pass the high-speed mode, and the mode will be terminated at an elapsed time of 30 seconds (mt=30), if any measured values of HC and CO exhaust gas concentrations during the high-speed mode

are less than or equal to the applicable standards listed in OAR 340-256-0400 and 340-256-0420.

(V-b) Restart. If at an elapsed time of 30 seconds (mt=30) the measured values of HC and CO exhaust gas concentrations during the high-speed mode are greater than the applicable short test standards as described in subsection (1)(b) of this rule, the vehicle's engine will be shutoff for not more than 10 seconds after returning to idle and then will be restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. The mode timer will stop upon engine shut off (mt=30) and resume upon engine restart. The pass/fail determination will resume as follows after 40 seconds (mt=40) have elapsed.

(V-c) The vehicle will pass the high-speed mode, and the mode will be terminated at an elapsed time of 60 seconds (mt=60), if any measured values of HC and CO exhaust gas concentrations during the high-speed mode are less than or equal to the applicable standards listed in OAR 340-256-0400 and 340-256-0420.

(V-d) If, at a point between an elapsed time of 60 seconds (mt=60) and 180 seconds (mt=180), both HC and CO emissions continue to decrease, and measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 or 340-256-0420, the vehicle will pass the high-speed mode, and the test will be terminated.

(V-e) If neither of sections (3)(b)(B)(ii)(I), (III) or (IV) of this rule is satisfied by an elapsed time of 180 seconds (mt=180), the vehicle will fail the high-speed mode, and the test will be terminated.

(C) All other light-duty vehicles. The pass/fail analysis for vehicles not specified in section (3)(b)(B) of this rule will begin after an elapsed time of 10 seconds (mt=10) using the following procedure.

(i) A pass or fail determination will be used for 1981 and newer model year vehicles that passed the idle mode to determine whether the high-speed mode should be terminated before or at the end of an elapsed time of 180 seconds (mt=180). For pre-1981 model year vehicles, no high speed idle mode test will be performed.

(I) If, before an elapsed time of 30 seconds (mt=30), the measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and 340-256-0420, the vehicle will pass the high-speed mode, and the test will be terminated.

(II) If emissions continue to decrease after an elapsed time of 30 seconds (mt=30) and if, at any point between an elapsed time of 30 seconds (mt=30) and 180 seconds (mt=180), the measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and 340-256-0420, the vehicle will pass the high-speed mode, and the test will be terminated.

(III) The vehicle will fail the high-speed mode, and the test will be terminated, if neither of the provisions of section (3)(b)(C)(i)(I) or (II) of this rule is satisfied.

(ii) A pass or fail determination will be made for 1981 and newer model year vehicles that failed the idle mode and the high-speed mode terminated before or at the end of an elapsed time of 180 seconds (mt=180). For pre-1981 model year vehicles, the duration of the high speed idle mode will be 30 seconds, and no pass or fail determination will be used at the high speed idle mode.

(I) The vehicle will pass the high-speed mode, and the mode will be terminated at an elapsed time of 30 seconds (mt=30), if any measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and 340-256-0420.

(II) If emissions continue to decrease after an elapsed time of 30 seconds (mt=30) and if, at any point between an elapsed time of 30 seconds (mt=30) and 180 seconds (mt=180), the measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and 340-256-0420, the vehicle will pass the high-speed mode,

and the test will be terminated.

(III) If neither of the provisions of section (3)(b)(C)(ii)(I) or (II) of this rule is satisfied, the vehicle will fail the high speed mode, and the test will be terminated.

(4) Second-chance idle mode. If the vehicle fails the first-chance idle mode and passes the high-speed mode, the mode timer will reset to zero ( $mt=0$ ), and a second chance idle mode will commence. The second-chance idle mode will have an overall maximum mode time of 30 seconds ( $mt=30$ ). The test will consist on an idle mode only.

(a) The engines of 1981-1987 Ford Motor Company vehicles and 1984-1985 Honda Preludes will be shut off for not more than 10 seconds and restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure.

(b) Except for diesel vehicles, the mode timer will start ( $mt=0$ ) when the vehicle engine speed is between 550 and 1300 rpm. If the engine speed exceeds 1300 rpm or falls below 550 rpm the mode timer will reset to zero and resume timing. The minimum second-chance idle mode length will be determined as described in section (4)(c) of this rule. The maximum second-chance idle mode length will be 30 seconds ( $mt=30$ ) elapsed time.

(c) The pass/fail analysis will begin after an elapsed time of 10 seconds ( $mt=10$ ). A pass or fail determination will be made for the vehicle and the second-chance mode will be terminated as follows:

(A) If, before an elapsed time of 30 seconds ( $mt=30$ ), any measured values are less than or equal to 100 ppm HC and 0.5 percent CO, the vehicle will pass the second-chance idle mode, and the test will be terminated.

(B) The vehicle will pass the second-chance idle mode, and the test will be terminated at the end of an elapsed time of 30 seconds ( $mt=30$ ) if, before that time, the criteria of paragraph(4)(c)(A) of this rule are not satisfied, and the measured values during the time period between 25 and 30 seconds ( $mt=25-30$ ) are less than or equal to the applicable short test standards listed in OAR 340-256-0400 and 340-256-0420.

(C) If neither of the provisions of sections (4)(c)(A) or (B) of this rule is satisfied by an elapsed time of 30 seconds ( $mt=30$ ), the vehicle will fail the second-chance idle mode, and the test will be terminated.

(5) If the vehicle is capable of being operated with both gasoline and gaseous fuels, then the steps in section (2) of this rule are to be followed so that emission test results are obtained from both fuels.

(6) If the inspector suspects that the vehicle is emitting propulsion exhaust noise in excess of the noise standards of OAR 340-256-0430, adopted pursuant to ORS 467.030, then a noise measurement will be conducted and recorded while the engine is at the speed specified in section (3)(b)(A) of this rule. A reading from each exhaust outlet must be recorded at the raised engine speed. This provision for noise inspection applies only within the Portland Vehicle Inspection Area.

(7) If the vehicle complies with OAR 340-256-0380 through 340-256-0430, ORS 467.030, 468A.350 through 468A.400, 803.350, and 815.295 through 815.325, then, following receipt of the require fees, the Private Business Fleet Vehicle Emission Inspector, Public Agency Fleet Vehicle Emission Inspector, or Vehicle Emission Inspector must issue the required Certificate of Compliance.

*State Effective: 7/12/2005; EPA effective: 1/18/2012; 76 FR 78571*

### **340-256-0350 Light Duty Motor Vehicle Emission Control Test Method for Enhanced Program**

#### **(1) General Requirements**

(a) Data Collection. The following information must be determined for the vehicle being tested and used to

automatically select the dynamometer inertia and power absorption settings:

(A) Vehicle type: LDPC, LDT1 or LDT2;

(B) Chassis model year;

(C) Make;

(D) Model;

(E) Gross vehicle weight rating; and

(F) Number of cylinders, or cubic inch displacement of the engine.

(b) Ambient Conditions. The ambient temperature, absolute humidity, and barometric pressure must be recorded continuously during the transient driving cycle or as a single set of readings up to 4 minutes before the start of the transient driving cycle.

(c) Restart. If shut off, the vehicle must be restarted as soon as possible before the test and must be running at least 30 seconds before the transient driving cycle.

(2) Pre-inspection and Preparation.

(a) Accessories. The Inspector must ensure that all accessories (air conditioning, heat, defogger, radio, automatic traction control if switchable, etc.) will be turned off.

(b) Leaks. The vehicle must be inspected for exhaust leaks. Vehicles with leaking exhaust system will be rejected from testing. Vehicles having coolant, oil or fuel leaks or any other such defect that is unsafe to allow the emission test to be conducted will be rejected from the testing area.

The Inspector is prohibited from conducting the emission test until the defects are corrected.

(c) Operating Temperature. Vehicles in overheated condition will be rejected from testing.

(d) Tire Condition. Vehicles will be rejected from testing if the tire cords, bubbles, cuts, or other damage are visible. Vehicles will be rejected that have space-saver spare tires on the drive axle.

Vehicles may be rejected that do not have reasonably sized tires. Vehicle tires will be visually checked for adequate pressure level. Drive wheel tires that appear low will be inflated to approximately 30 psi or to tire sidewall pressure or manufacturers recommendations.

(e) Ambient Background. Background concentrations of hydrocarbons, carbon monoxide, oxides of nitrogen, and carbon dioxide (HC, CO, NO<sub>x</sub>, and CO<sub>2</sub>, respectively) will be sampled to determine background concentration of constant volume sampler dilution air. The sample will be taken for a minimum of 15 seconds within 120 seconds of the start of the transient driving cycle, using the same analyzers used to measure tailpipe emissions. Average readings over the 15 seconds for each gas will be recorded in the test record. Testing will be prevented until the average ambient background levels are less than 20 ppm HC, 35 ppm CO, and 2 ppm NO<sub>x</sub>.

(f) Sample System Purge. While a lane is in operation, the CVS will continuously purge the CVS hose between tests, and the sample system will be continuously purged when not taking measurements.

(g) Negative Values. Negative gram per second readings will be integrated as zero and recorded as such.

(3) Equipment Positioning and Setting.

(a) Roll Rotation. The vehicle will be maneuvered onto the dynamometer with the drive wheels positioned on the dynamometer rolls. Before the test begins, the rolls will be rotated until the vehicle laterally stabilizes on the dynamometer. Drive wheel tires will be dried if necessary to prevent slippage during the initial acceleration. I

(b) Purge Equipment. After the vehicle is positioned on the dynamometer, the vehicle gas cap is removed. A replacement cap with a ported hole through the cap is installed on the vehicle and the tubing to duct Helium to vehicle is connected to the port on the replacement cap. Helium flow into the cap is computer controlled to match the timing of the transient driving cycle. The evaporative canister purge will be measured during the transient driving cycle by inputting Helium under pressure into the test vehicle's fuel tank. Helium is measured in the vehicle exhaust with a detection device and accumulated volume of Helium is compared with the standard of 0.45 liters of Helium to determine pass/fail.

(c) Cooling System. Testing will not begin until the test-cell cooling system is positioned and activated. The cooling system will be positioned to direct air to the vehicle cooling system, but will not be directed at the catalytic converter.

(d) Vehicle Restraint. Testing will not begin until the vehicle is restrained and, for front-wheel drive vehicles, the parking brake is set.

(e) Dynamometer Settings. Dynamometer power absorption and inertia weight settings will be automatically chosen from an EPA supplied electronic look-up table that will be referenced based upon the vehicle identification information obtained in section (1)(a) of this rule. Vehicles not listed will be tested using default power absorption and inertia settings as follows:

(f) Exhaust Collection System. The exhaust collection system will be positioned to ensure that the entire exhaust stream from the tailpipe is captured during the transient driving cycle.

#### (4) Vehicle Emission Test Sequence. I

(a) Transient Driving Cycle. The Oregon enhanced test cycle consists of a single 31 second symmetrical peak with a maximum speed of 30.1 miles per hour (MPH). If the vehicle exceeds the emission standards established in OAR 340-256-0410 additional cycles up to a maximum of four (4) will be driven. If the vehicle passes the standards during any of the four cycles, the test will be terminated. After receiving the required fees, the Inspector will issue the required Certificate of Compliance. If after four cycles the vehicle still has not passed the test, the vehicle fails. The vehicle will be driven over the following cycle:

(b) Driving Trace. The Inspector will follow an electronic, visual depiction of the time/speed relationship of the transient driving cycle (hereinafter, the trace). The visual depiction of the trace will be of sufficient magnification and adequate detail to allow accurate tracking by the Inspector and will permit the Inspector to anticipate upcoming speed changes. The trace will also clearly indicate gear shifts as specified in section (4)(c) of this rule.

(c) Shift Schedule. For vehicles with manual transmissions, Inspectors will shift gears according to the following shift schedule: [Table not included. See ED. NOTE.] Gear shifts will occur at the points in the driving cycle where the specified speeds are obtained.

(d) Speed Excursion Limits. Speed excursion limits will apply as follows:

(A) The upper limit is 2 mph higher than the highest point on the trace within 1 second of the given time.

(B) The lower limit is 2 mph lower than the lowest point on the trace within 1 second of the given time.

(C) Speed variations greater than the tolerances (such as may occur during gear changes) are acceptable provided they occur for no more than 2 seconds on any occasion.

(D) Speeds lower than those prescribed during accelerations are acceptable provided the vehicle is operated at maximum available power during such accelerations until the vehicle speed is within the excursion limits.

(E) Exceedances of the limits in (A) through (C) of this section will automatically result in a void test. The station manager can override the automatically void test if the manager determines that the conditions specified in section (4)(d)(D) of this rule occurred. Tests will be aborted if the upper excursion limits are exceeded. Tests may be aborted if the lower limits are exceeded.

(e) Speed Variation Limits.

(A) A linear regression of feedback value on reference value will be performed on each transient driving cycle for each speed using the method of least squares, with the best fit equation having the form:  $y = mx + b$ , where:

(i)  $y$  = The feedback (actual) value of speed;

(ii)  $m$  = The slope of the regression line;

(iii)  $x$  = The reference value; and

(iv)  $b$  = The y-intercept of the regression line.

(B) The standard error of estimate (SE) of  $y$  on  $x$  will be calculated for each regression line. A transient driving cycle lasting the full 31 seconds that exceeds the following criteria will be void and the test will be repeated:

(i) SE = 2.0 mph maximum.

(ii)  $m$  = 0.96-1.01.

(iii)  $r^2$  = 0.97 minimum.

(iv)  $b$  =  $\pm 2.0$  mph.

(f) Distance Criteria. The actual distance traveled for the transient driving cycle and the equivalent vehicle speed (i.e., roll speed) will be measured. If the absolute difference between the measured distance and the theoretical distance for the actual test exceeds 0.05 miles, the test will be void.

(g) Vehicle Stalls. Vehicle stalls during the test will result in a void and a new test. Three (3) stalls will result in test failure or rejection from testing.

(h) Dynamometer Controller Check. For each test, the measured horsepower, and inertia if electric simulation is used, will be integrated from 55 seconds to 81 seconds (divided by 26 seconds), and compared with the theoretical road-load horsepower (for the vehicle selected) integrated over the same portion of the cycle. The same procedure will be used to integrate the horsepower between 189 seconds to 201 seconds (divided by 12 seconds). The theoretical horsepower will be calculated based on the observed speed during the integration interval. If the absolute difference between the theoretical horsepower and the measured horsepower exceeds 0.5 hp, the test will be void. Alternate error checking methods may be used if shown to be equivalent.

(i) Inertia Weight Selection. Operation of the inertia weight selected for the vehicle will be verified as specified in

OAR 340-256-0460. For systems employing electrical inertia simulation, an algorithm identifying the actual inertia force applied during the transient driving cycle will be used to determine proper inertia simulation. For all dynamometers, if the observed inertia is more than 1% different from the required inertia, the test will be void.

(j) Constant Volume Sampling (CVS) Operation. The CVS operation will be verified for each test for a Critical Flow Venturi (CFV) type CVS by measuring either the absolute pressure difference across the venturi or measuring the blower vacuum behind the venturi for minimum levels needed to maintain choke flow for the venturi design. The operation of an Subsonic Venturi (SSV) type CVS will be verified throughout the test by monitoring the difference in pressure between upstream and throat pressure. The minimum values will be determined from system calibrations. Monitored pressure differences below the minimum values will void the test.

(k) Fuel Economy. For each test, the health of the overall analysis system will be evaluated by checking a test vehicle's fuel economy for reasonableness, relative to upper and lower limits, representing the range of fuel economy values normally encountered for the test inertia and horsepower selected. For each inertia selection, the upper fuel economy limit will be determined using the lowest horsepower setting typically selected for the inertia weight, along with statistical data, test experience, and engineering judgment. A similar process for the lower fuel economy limit will be used with the highest horsepower setting typically selected for the inertia weight. For test inertia selections where the range of horsepower settings is greater than 5 horsepower, at least two sets of upper and lower fuel economy limits will be determined and appropriately used for the selected test inertia. Tests with fuel economy results in excess of 1.5 times the upper limit will result in a void test.

(5) Emission Measurements. The emission analysis system will sample and record dilute exhaust HC, CO, CO<sub>2</sub>, and NO<sub>x</sub> during the transient driving cycle.

(6) If it is determined that the vehicle complies with OAR 340-256-0400 and ORS 815.310 through 815.325, then, after receiving the required fees, the Private Business Fleet Vehicle Emission Inspector, Public Agency Fleet Vehicle Emission Inspector, or Vehicle Emission Inspector must issue the required Certificate of Compliance.

*State effective: 7/12/2005; EPA effective: 1/18/2012; 76 FR 78571*

### **340-256-0355 Emissions Control Test Method for OBD Test Program**

The OBD test must be performed in accordance with the Vehicle Inspection Program Inspection and Maintenance Policies and Procedure Number 225.00, which includes downloading computerized vehicle OBD information, observing trouble codes, and observing the malfunction indicator lights located on vehicle dashboards.

*State effective: 10/25/2000; EPA effective: 1/21/2005; 69 FR 67819*

### **340-256-0356 Emissions Control Test Method for On-Site Vehicle Testing for Automobile Dealerships**

The on-site vehicle test will be performed in accordance with the Vehicle Inspection Program Inspection and Maintenance Policies and Procedure Number 226.00. The test will be performed by DEQ using DEQ testing equipment and conducted at the dealership location. The test program applies to manufacturer franchise automobile dealerships only, as defined in ORS 650.120(1). Dealerships may use either on-site testing or the centralized DEQ test stations.

*State effective: 10/4/2001; EPA effective: 1/21/2005; 69 FR 67819*

### **340-256-0370 Renewal of Registration for Light Duty Motor Vehicles and Heavy Duty Gasoline Motor Vehicles Temporarily Operating Outside of Oregon**

Vehicles registered in the boundaries described in OAR 340-204-0080 that are being operated in another state and are at an address located at least 150 miles outside the Oregon border shall comply with the following requirements.

(1) For vehicles operated within another Environmental Protection Agency approved Inspection and Maintenance (I/M) program area, the Department of Environmental Quality shall establish reciprocity provisions to ensure motor vehicle compliance with the other state's I/M requirements. Compliance with the other state's I/M program requirements is equivalent to the issuance of a Certificate of Compliance.

(2) For vehicles operated in another state, but not within another Environmental Protection Agency approved Inspection and Maintenance (I/M) area, the Department of Environmental Quality shall issue a temporary exemption from I/M testing requirements until such time as the vehicle returns to Oregon. Within 30 calendar days of the date the vehicle returns to Oregon it shall be required to comply with the Oregon I/M program's test criteria, methods and standards.

*State effective: 10/14/1999; EPA effective: 1/21/2005; 69 FR 67819*

### **340-256-0380 Light Duty Motor Vehicle Emission Control Test Criteria for Basic Program**

(1) No vehicle emission control test is valid if the vehicle exhaust system leaks in such a manner as to dilute the exhaust gas being sampled by the gas analytical system. For the purpose of the emission control tests conducted at state facilities, except for diesel vehicles, tests are invalid if the exhaust gas is diluted to such an extent that the sum of the carbon monoxide and carbon dioxide concentrations recorded for the idle speed reading from an exhaust outlet is six percent or less, and on 1975 and newer vehicles with air injection systems seven percent or less.

(2) No vehicle emission control test is valid if the engine idle speed exceeds the manufacturers's idle speed specifications by over 200 RPM.

(3)(a) No vehicle emission control test for a 1975 or newer model vehicle is valid if the gas cap or catalyst has been disconnected, plugged, or otherwise made inoperative in violation of ORS 815.305(1), except as noted in ORS 815.305(2) or as provided for by 40 CFR 85.1701-1 709 (published July 1, 2003).

(b) The Department may provide alternative criteria for those required under subsection (a) of this section if it determines that the component or an acceptable alternative is unavailable. Such alternative criteria may be granted on the basis of the nonavailability of the original part, replacement part, or comparable alternative solution.

(c) The use of a nonoriginal equipment aftermarket part (including a rebuilt Part) as a replacement part is not a violation of ORS 815.305 if a reasonable basis exists for knowing that such use will not adversely affect emission control efficiency. The Department will maintain a list of those parts that have been determined to adversely affect emission control efficiency;

(d) The use of a nonoriginal equipment aftermarket part or system as a add -on, auxiliary; augmenting, or secondary part of system, is not a violation of ORS 815.305 if such part or system is on the list of Modifications to Motor Vehicle Emission Control Systems Exempted Under California Vehicle Code Section 27156" granted by the California Air Resources Board, is on the U.S. Environmental Protection Agency's list of "Certified to EPA Standards," or the Department has determined after reviewing testing data that there is no decrease in the efficiency or effectiveness in the control of air pollution;

(e) Adjustments or alterations of particular part or system parameter, if done for purposes of maintenance or repair according to the vehicle or engine manufacturer's instructions, are not violations of ORS 815.305.

(4) A 1981 or newer model vehicle that has been converted to operate on gaseous fuels is not in violation of ORS 815.305 when elements of the factory-installed motor vehicle air pollution control system are disconnected for the purpose of conversion to gaseous fuel as authorized by ORS 815.305.

(5) For a 1975 through 1980 model year vehicle in which the original engine has been replaced, if either the

vehicle body or chassis original engine (per registration/title) or replacement engine (as manufactured) had a catalytic converter system, it must be present, intact, and operational before a Certificate of Compliance may be issued.

(6) For a 1981 or newer model year vehicle in which the original engine has been replaced, the emission test standards and applicable emissions control equipment for the year, make, and model of the vehicle body or chassis (per registration or title) or replacement engine, whichever is newer, apply. For those diesel powered vehicles that have been converted to operate on gasoline or gasoline equivalent fuel(s), the emission test standards and applicable emission control equipment for the year, make, and model of the gasoline equivalent powered engine as originally manufactured, for the vehicle body or chassis (per the registration) or replacement engine, whichever is newer, apply.

(7) For those vehicles registered or titled as a 1981 or newer model year that were assembled by other than a licensed motor vehicle manufacturer, such as an Assembled, Reconstructed, or Replica Vehicle, Department personnel must determine the applicable emission test standards based upon the vintage of the vehicle engine. The year of the engine is presumed to be that stated by the vehicle owner, unless Department personnel determine, after physical inspection, that the year of the engine is other than that stated by the owner.

(8) An imported nonconforming motor vehicle that has been imported under a certificate of conformity or modification/test procedure pursuant to 40 CFR Part 85, Subpart P, must comply with the emission control equipment requirements of such certificate or procedure.

*State Effective: 7/12/2005; EPA effective: 1/18/2012; 76 FR 78571*

### **340-256-0390 Heavy Duty Gasoline Motor Vehicle Emission Control Test Criteria**

(1) No vehicle emission control test is valid if the vehicle exhaust system leaks in such a manner as to dilute the exhaust gas being sampled by the gas analytical system. For the purpose of emission control tests conducted at state facilities, tests will not be considered valid if the exhaust gas is diluted to such an extent that the sum of the carbon monoxide and carbon dioxide concentrations recorded for the idle speed reading from an exhaust outlet is six percent or less.

(2) No vehicle emission control test is valid if the engine idle speed exceeds 1300 RPM.

(3)(a) No vehicle emission control test for a 1981 or newer model vehicle is valid if the gas cap or catalyst has been disconnected, plugged, or otherwise made inoperative in violation of ORS 815.305(1), except as noted in ORS 815.305(2):

(b) The Department may provide alternative criteria for those required under subsection (a) of this section if it determines that the component or an acceptable alternative is unavailable. Such alternative criteria may be granted on the basis of the nonavailability of the original part, replacement part, or comparable need for an alternative solution.

(c) The use of a nonoriginal equipment aftermarket part (including a rebuilt part) as a replacement part is not a violation of ORS 815.305, if a reasonable basis exists for knowing that such use will not adversely affect emission control efficiency. The Department will maintain a list of those parts that have been determined to adversely affect emission control efficiency;

(d) The use of a nonoriginal equipment aftermarket part or system as an add-on, auxiliary, augmenting, or secondary part or system, is not a violation of ORS 815.305, if such part or system is listed on the exemption list maintained by the Department;

(e) Adjustments or alterations of a particular part or system parameter, if done for purposes of maintenance or repair according to the vehicle or engine manufacturer's instructions, are not violations of ORS 815.305.

(4) A 1981 or newer model motor vehicle which has been converted to operate on gaseous fuels is in violation of ORS 815.305 if elements of the factory-installed motor vehicle air pollution control system are disconnected for the purpose of conversion to gaseous fuel as authorized by ORS 815.305.

*State Effective: 7/12/2005; EPA effective: 1/18/2012; 76 FR 78571*

### **340-256-0400 Light Duty Motor Vehicle Emission Control Standards for Basic Program**

(1) No vehicle emission control test is valid if the vehicle exhaust system leaks in such a manner as to dilute the exhaust gas being sampled by the gas analytical system. For the purpose of emission control tests conducted at state facilities, tests will not be considered valid if the exhaust gas is diluted to such an extent that the sum of the carbon monoxide and carbon dioxide concentrations recorded for the idle speed reading from an exhaust outlet is six percent or less.

(2) No vehicle emission control test is valid if the engine idle speed exceeds 1300 RPM.

(3)(a) No vehicle emission control test for a 1981 or newer model vehicle is valid if the gas cap or catalyst has been disconnected, plugged, or otherwise made inoperative in violation of ORS 815.305(1), except as noted in ORS 815.305(2).

(b) The Department may provide alternative criteria for those required under subsection (a) of this section if it determines that the component or an acceptable alternative is unavailable. Such alternative criteria may be granted on the basis of the nonavailability of the original part, replacement part, or comparable need for an alternative solution.

(c) The use of a nonoriginal equipment aftermarket part (including a rebuilt part) as a replacement part is not a violation of ORS 815.305, if a reasonable basis exists for knowing that such use will not adversely affect emission control efficiency. The Department will maintain a list of those parts that have been determined to adversely affect emission control efficiency;

(d) The use of a nonoriginal equipment aftermarket part or system as an add-on, auxiliary, augmenting, or secondary part or system is not a violation of ORS 815.305, if such part or system is listed on the Department's exemption list;

(e) Adjustments or alterations of a particular part or system parameter, if done for purposes of maintenance or repair according to the vehicle or engine manufacturer's instructions, are not violations of ORS 815.305.

(4) A 1981 or newer model motor vehicle that has been converted to operate on gaseous fuels is in violation of ORS 815.305 if elements of the factory-installed motor vehicle air pollution control system are disconnected for the purpose of conversion to gaseous fuel as authorized by ORS 815.305.

*State effective: 10/14/99; EPA effective: 1/21/2005; 69 FR 67819*

### **340-256-0410 Light Duty Motor Vehicle Emission Control Standards for Enhanced Program**

(1) Grams Per Mile (GPM) for Light Duty Passenger Cars (LDPC):

(a) Model Year -- 1996 and Newer:

(A) Hydrocarbons (HC) -- 0.9;

(B) Carbon Monoxide(CO) -- 20;

(C) Oxides of Nitrogen (NO<sub>x</sub>) -- 2.25.

(b) Model Year -- 1983–1995:

(A) Hydrocarbons (HC) -- 1.2;

(B) Carbon Monoxide(CO) -- 30;

(C) Oxides of Nitrogen (NO<sub>x</sub>) -- 3.00.

(c) Model Year -- 1981–1982:

(A) Hydrocarbons (HC) -- 1.2;

(B) Carbon Monoxide(CO) -- 60;

(C) Oxides of Nitrogen (NO<sub>x</sub>) -- 3.00.

(2) Grams Per Mile (GPM) for Light Duty Truck 1 (LDT1) 6,000 GVWR or Less:

(a) Model Year -- 1996 and Newer 3750 Loaded Vehicle Weight or Less:

(A) Hydrocarbons (HC) -- 0.9;

(B) Carbon Monoxide(CO) -- 20;

(C) Oxides of Nitrogen (NO<sub>x</sub>) -- 2.25.

(b) Model Year -- 1996 and Newer 3751 Loaded Vehicle Weight or More:

(A) Hydrocarbons (HC) -- 1.2;

(B) Carbon Monoxide(CO) -- 26;

(C) Oxides of Nitrogen (NO<sub>x</sub>) -- 2.70.

(c) Model Year -- 1988–1995:

(A) Hydrocarbons (HC) -- 2.4;

(B) Carbon Monoxide(CO) -- 80;

(C) Oxides of Nitrogen (NO<sub>x</sub>) -- 3.75.

(d) Model Year -- 1984–1987:

(A) Hydrocarbons (HC) -- 2.4;

(B) Carbon Monoxide(CO) -- 80;

(C) Oxides of Nitrogen (NO<sub>x</sub>) -- 6.75.

(e) Model Year -- 1981–1983:

(A) Hydrocarbons (HC) -- 5.1;

(B) Carbon Monoxide(CO) -- 140;

(C) Oxides of Nitrogen (NO<sub>x</sub>) -- 6.75.

(3) Grams Per Mile (GPM) for Light Duty Truck 2 (LDT2) 6,001 to 8500 GVWR:

(a) Model Year-- 1996 and Newer 5750 Loaded Vehicle Weight or Less:

(A) Hydrocarbons (HC) -- 1.2;

- (B) Carbon Monoxide(CO) -- 26;
- (C) Oxides of Nitrogen (NO<sub>x</sub>) -- 2.70.

(b) Model Year-- 1996 and Newer 5751 Loaded Vehicle Weight or More:

- (A) Hydrocarbons (HC) -- 1.2;
- (B) Carbon Monoxide(CO) -- 30;
- (C) Oxides of Nitrogen (NO<sub>x</sub>) -- 3.00.

(c) Model Year -- 1988–1995:

- (A) Hydrocarbons (HC) -- 2.4;
- (B) Carbon Monoxide(CO) -- 80;
- (C) Oxides of Nitrogen (NO<sub>x</sub>) -- 5.25.

(d) Model Year-- 1984–1987:

- (A) Hydrocarbons (HC) -- 2.4;
- (B) Carbon Monoxide(CO) -- 80;
- (C) Oxides of Nitrogen (NO<sub>x</sub>) -- 6.75.

(e) Model Year -- 1981–1983:

- (A) Hydrocarbons (HC) -- 5.1;
- (B) Carbon Monoxide(CO) -- 140;
- (C) Oxides of Nitrogen (NO<sub>x</sub>) -- 6.75.

(4) The Director may establish specific separate standards, differing from those listed in sections (1) through (3) of this rule for vehicle classes which are determined to present prohibitive inspection problems using the listed standards.

*State effective: 10/14/1999; EPA effective: 1/21/2005; 69 FR 67819*

### **340-256-0420 Heavy-Duty Gasoline Motor Vehicle Emission Control Standards**

(1) Carbon monoxide idle emission values not to be exceeded:

- (a) 1975–1978 Model Year: 4.0%;
- (b) 1979 and Newer Model Year without catalyst: 3.0%;
- (c) 1985 and Newer Model Year with catalyst: 1.0%.

(2) Carbon Monoxide nominal 2,500 rpm emission values not to be exceeded:

- (a) 1975 and Newer Model Year without catalyst with carburetor: 3.0%;
- (b) 1975 and Newer Model Year without catalyst with fuel injection: No Check;

- (c) 1985 and Newer Model Year with catalyst: 1.0%.
- (3) Hydrocarbon idle emission values not to be exceeded:
  - (a) 1975–1978 Model Year: 500 PPM;
  - (b) 1979 and Newer Model Year without catalyst: 350 PPM;
  - (c) 1985 and Newer Model Year with catalyst: 220 PPM.
- (4) Hydrocarbon nominal 2,500 rpm emission values not be exceeded: 1985 and Newer Model Year with catalyst: 220 PPM.
- (5) There shall be no visible emission during the steady-state unloaded engine idle and raised rpm portion of the emission test from either the vehicle's exhaust system or the engine crankcase.
- (6) The Director may establish specific separate standards, differing from those listed in sections (1) through (4) of this rule for vehicle classes which are determined to present prohibitive inspection problems using the listed standards.

*State effective: 10/14/1999; EPA effective: 1/21/2005; 69 FR 67819*

#### **340-256-0440 Criteria for Qualifications of Persons Eligible to Inspect Motor Vehicles and Motor Vehicle Pollution Control Systems and Execute Certificates**

- (1) Five separate classes of licenses are established as follows:
  - (a) Private Business Fleet;
  - (b) Public Agency Fleet;
  - (c) Private Business Fleet Vehicle Emission Inspector;
  - (d) Public Agency Fleet Vehicle Emission Inspector;
  - (e) Vehicle Emission Inspector.
- (2) Application for a license must be completed on a form provided by the Department.
- (3)(a) Each fleet's license is valid for not more than a one year period and expires on December 31 of each year unless revoked, suspended, or returned to the Department;
- (b) Each Inspector's license is valid for not more than a two year period and expires on December 31 of every other year unless revoked, suspended, or returned to the Department.
- (4) The Department will not issue any license until the applicant has fulfilled all requirements and paid the required fee.
- (5) No license is transferable.
- (6) Each license may be renewed upon application and receipt of renewal fee if the application for renewal is made within the 30-day period prior to the expiration date and the applicant complies with all other licensing requirements.

(7) A license may be suspended, revoked, or not renewed if the licensee has violated this Division or ORS 468A.350 to 468A.400, 815.295 to 815.325.

(8) A Private Business Vehicle Emission Inspector or Public Agency Fleet Vehicle Emission Inspector license is valid only for inspection of and execution of Certificates of Compliance for motor vehicle pollution control systems and motor vehicles of the Private Business Fleet or Public Agency Fleet that employs the Private Business Fleet Vehicle Emission Inspector or Public Agency Fleet Vehicle Emission Inspector on a full time basis. The Department may authorize a Public Agency Fleet Vehicle Emission Inspector to perform inspections and execute Certificates of Compliance for vehicles of other governmental agencies if the inspector has contracted with that agency for that service and the Director approves the contract.

(9) To initially receive or renew a license as a Private Business Fleet Vehicle Emission Inspector, a Public Agency Fleet Vehicle Emission Inspector or a Vehicle Emission Inspector, the applicant must be an employee of a Private Business Fleet, a Public Agency Fleet, the Vehicle Inspection Program of the Department, or an employee of an Independent Contractor and submit a completed application. All Inspectors must receive formal training and be licensed or certified to perform inspections pursuant to this Division. The duration of the training program for persons employed by a Private Business Fleet or a Public Agency Fleet must be at least 16 hours.

(a) Training.

(A) Inspector training must include the following subjects:

(i) The air pollution problems, its causes and effects;

(ii) The purpose, function and goal of the inspection program;

(iii) Inspection regulations and procedures;

(iv) Technical details of the test procedure and the rationale for their design;

(v) Test equipment operation, calibration and maintenance;

(vi) Emission control device function, configuration and inspection;

(vii) Quality control procedures and their purpose;

(viii) Public relations;

(ix) Safety and health issues related to the inspection process; and

(x) OBD test systems.

(B) In order to complete the training requirement, a trainee must pass (minimum of 80% correct responses) a written test covering all aspects of the training. In addition, a hands-on test must be administered in which the trainee demonstrates without assistance the ability to conduct a proper inspection, to properly utilize equipment and to follow other procedures. Inability to properly conduct all test procedures shall constitute failure of the test. The Department will take appropriate steps to insure the security and integrity of the testing process.

(b) Licensing and certification.

(A) All Inspectors must be either licensed or certified by the Department in order to perform official inspections.

(B) Completion of Inspector training and passing required tests is a condition of licensing or certification.

(C) Inspector licenses and certificates are valid for no more than 2 years, at which point refresher training and testing are required before renewal. Alternative approaches based on more comprehensive skill examination and determination of Inspector competency may be used.

(D) Licenses and certificates are not a legal right, but rather, are a privilege bestowed by the Department and conditional upon adherence to Department requirements.

(c) Enforcement against Inspectors. Any violations are subject to the Department's enforcement procedures.

(A) Whenever an Inspector intentionally improperly passes a vehicle for any required portion of the test, the Department will either suspend the Inspector for at least 6 months or assess a penalty equivalent to the Inspector's salary for the same time period.

(B) License or certificate suspension or revocation means the individual is barred from direct or indirect involvement in any inspection operation during the term of the suspension or revocation.

(10) To be licensed as a Private Business Fleet or a Public Agency Fleet, the applicant must:

(a) Employ on a full time basis a Private Business Fleet Vehicle Emission Inspector or;

(b) Employ on a full time basis a Public Agency Fleet Vehicle Emission Inspector; and

(c) Be equipped with an gas analytical system complying with criteria established in OAR 340-256-0450 or 340-256-0460;

(d) Be equipped with a sound level meter conforming to "**Requirements for Sound Measuring Instruments and Personnel**" (NPCS-2) manual, revised September 15, 1974, of this Department.

(e) If 1996 and newer light duty vehicles are a part of the self-inspected fleet of vehicles, the fleet must be equipped by January 1, 2001 with a scan tool for downloading vehicle OBD emissions data with criteria established in OAR 340-256-0465.

(11) No person licensed as a Private Business Fleet or Public Agency Fleet may advertise or represent himself as being licensed to inspect motor vehicles to determine compliance with the criteria and standards of OAR 340-256-0380 and 340-256-0400.

*State effective: 10/25/2000; EPA effective: 1/21/2005; 69 FR 67819*

### **340-256-0450 Gas Analytical System Licensing Criteria for Basic Program**

(1) Test equipment. Computerized test systems are required for performing any measurement on subject vehicles. Performance features of computerized test systems. The test equipment shall be certified to meet the requirements contained in **40 CFR Part 51 Appendix D (November 5, 1992)** and new equipment shall be subjected to acceptance test procedures to ensure compliance with program specifications.

(a) Emission test equipment shall be capable of testing all subject vehicles and shall be updated from time to time to accommodate new technology vehicles as well as changes to the Vehicle Inspection Program.

(b) At a minimum, emission test equipment:

(A) Shall be automated to the highest degree commercially available to minimize the potential for intentional fraud and/or human error;

- (B) Shall be secure from tampering and/or abuse;
  - (C) Shall be based upon written specifications; and
  - (D) Shall be capable of simultaneously sampling dual exhaust vehicles.
- (c) The vehicle owner or driver shall be provided with a computer-generated record of test results, including all of the items listed in **40 CFR Part 85, subpart W** as being required on the test record. The test report shall include:
- (A) A vehicle description, including license plate number, vehicle identification number, and odometer reading;
  - (B) The date and time of the test;
  - (C) The name or identification number of individual(s) performing the tests and the location of the test station and lane;
  - (D) The type of test performed, including emission tests, visual checks for the presence of emission control components, and functional, evaporative checks;
  - (E) The applicable test standards;
  - (F) A statement indicating the availability of warranty coverage as required in **section 207** of the **Clean Air Act**;
  - (G) Certification that tests were performed in accordance with the regulations; and
  - (H) For vehicles that fail the tailpipe emission test, information on the possible causes of the specific pattern of high emission levels found during the test.
- (2) Functional characteristics of computerized test systems. The test system is composed of emission measurement devices and other motor vehicle test equipment controlled by a computer.
- (a) The test system shall automatically:
    - (A) Make a pass/fail decision for all measurements;
    - (B) Record test data to an electronic medium;
    - (C) Conduct regular self-testing of recording accuracy;
    - (D) Perform electrical calibration and system integrity checks before each test, as applicable; and
    - (E) Initiate system lockouts for:
      - (i) Tampering with security aspects of the test system;
      - (ii) Failing to conduct or pass periodic calibration or leak checks; and
      - (iii) A full data recording medium or one that does not pass a cyclical redundancy check.
  - (b) The test system shall insure accurate data collection by limiting, cross-checking; and/or confirming manual data entry.

(3) Gas analytical systems used by Private Business Fleets or Public Agency Fleets must meet the criteria established in this rule by not later than January 1, 1998.

*State effective: 10/14/1999; EPA effective: 1/21/2005; 69 FR 67819*

#### **340-256-0460 Gas Analytical System Licensing Criteria for Enhanced Program**

(1) Light Duty vehicles described in OAR 340-256-0300(1)(a)(B) may be tested with a gas analytical system that meets the equipment specification described in the **United States Environmental Protection Agency (EPA) High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications, April 1994**. This equipment is referred to as Laboratory Grade Inspection/Maintenance 240 (IM240) testing equipment.

(2) Alternatively, gas analytical systems meeting the EPA "Inspection Grade" (IG) criteria may be utilized. This system, capable of duplicating the IM240 driving cycle, consists of four main pieces of equipment:

(a) Computer system;

(b) Infrared exhaust gas analyzer capable of measuring at least CO, CO<sub>2</sub>, HC and NO<sub>x</sub>;

(c) CVS system to capture exhaust flow during testing needed to convert the grams per mile readings and fuel economy; and

(d) A dynamometer capable of simulating the IM240 driving cycle.

(3) Gas analytical systems used by Private Business Fleets or Public Agency Fleets must meet the criteria established in this rule by not later than July 1, 1998.

*State effective: 10/14/1999; EPA effective: 1/21/2005; 69 FR 67819*

#### **340-256-0465 Test Equipment Licensing Criteria for OBD Test Program**

This equipment must contain the standard terminal Diagnostic Link Connector for OBD systems and be capable of the following:

(1) Making an automatic pass/fail decision based on malfunction indicator light observations and vehicle OBD system download.

(2) Transferring electronic vehicle test result to the VIP central data server for emissions data.

(3) Meeting additional fleet operations specifications as prescribed by the Department.

*State effective: 10/25/2000; EPA effective: 1/21/2005; 69 FR 67819*

#### **340-256-0470 Agreement With Independent Contractor; Qualifications of Contractor; Agreement Provisions**

(1) The Director is authorized to enter into an emissions inspection agreement with one or more independent contractors, subject to public bidding, to provide for the construction, equipment, establishment, maintenance and operation of any emissions inspection stations or activities in such numbers and locations as may be required to provide vehicle owners reasonably convenient access to inspection facilities for the purpose of obtaining compliance with rules contained in this Division.

(2) The Director is prohibited from entering into an emissions inspection agreement with any independent contractor who:

- (a) Is engaged in the business of manufacturing, selling, maintaining or repairing vehicles, except that the independent contractor shall not be precluded from maintaining or repairing any vehicle owned or operated by the independent contractor;
- (b) Does not have the capability, resources or technical and management skill to adequately construct, equip, operate or maintain a sufficient number of emissions inspection stations to meet the demand for inspection of every vehicle which is required to be submitted for inspection pursuant to this Division.
- (3) All persons employed by the independent contractor in the performance of an emissions inspection agreement are employees of the independent contractor and not of this state. An employee of the independent contractor shall not wear any badge, insignia, patch, emblem, device, word or series of words which would tend to indicate that such person is employed by this state. Employees of the independent contractor are specifically prohibited under this subsection from wearing the flag of this state, the words "state of Oregon," the words "emissions inspection program" or any similar emblem or phrase.
- (4) The emissions inspection agreement authorized by this rule shall contain at least the following provisions:
- (a) A contract term or duration of not more than ten years with reasonable compensation to the contractor if the provisions of this rule are repealed during the ten year term;
- (b) That nothing in the agreement or contract requires the state to purchase any asset or assume any liability if such agreement or contract is not renewed;
- (c) The minimum requirements for adequate staff, equipment, management and hours and place of operation of emissions inspection stations;
- (d) The submission of such reports and documentation concerning the operation of emissions inspection stations as the Director and the Attorney General may require;
- (e) Surveillance by the Department of Environmental Quality and the Department of Administrative Services to ensure compliance with vehicle emissions testing standards, procedures, rules and laws;
- (f) The right of this state, upon providing reasonable notice to the independent contractor, to terminate the contract with the independent contractor and to assume operation of the vehicle emissions inspection program;
- (g) The right of this state upon termination of the term of the agreement or upon assumption of the operation of the program to have transferred and assigned to it for reasonable compensation any interest in land, buildings, improvements, equipment, parts, tools and services used by the independent contractors in their operation of the program;
- (h) The right of this state upon termination of the term of the agreement or assumption of the operation of the program to have transferred and assigned to it any contract rights, and related obligations, for land, buildings, improvements, equipment, parts, tools and services used by the independent contractors in their operation of the program;
- (i) The obligation of the independent contractors to provide in any agreement to be executed by them, and to maintain in any agreements previously executed by them, for land, buildings, improvements, equipment, parts, tools and services used in their operation of the program for the right of the independent contractors to assign to this state any of their rights and obligations under such contract;
- (j) The amounts of liquidated damages payable by this state to the independent contractor if the state exercises its

right to terminate the contract at the conclusion of the first, second, third or fourth year of the contract pursuant to section (f) of this rule. The damages recoverable by the independent contractor if the state exercises its right to terminate the contract shall be limited to the liquidated damages specified in the contract;

(k) Any other provision deemed necessary by the Department of Administrative Services for enforcement of the emissions inspection agreement.

(5) In conjunction with the Attorney General and the Department of Administrative Services, the Department of Environmental Quality shall establish bid specifications or contract terms for a contract with an independent contractor as provided in this rule, review bids for award of a contract with the independent contractors and negotiate any terms of a contract with the independent contractors.

(6) Before entering into any contract the Director shall inquire into the marketplace of independent contractors and based upon this review shall select the independent contractor who in the sole discretion of the Director is best qualified to perform the duties required by this rule and can be operational on January 1, 1998. After a contract is awarded to an independent contractor, the Director may modify the contract with the independent contractor to allow the contractor and the state to comply with amendments to applicable statutes or rules. This modification is exempt from public bidding and may include the addition, deletion or alteration of any contract provision in order to make compliance feasible, including inspection fees and services rendered. Provisions relating to contract term or duration may be amended, except that the term or duration of the contract shall not be extended more than three and one-half years beyond the term of the original contract as awarded. If the Director cannot negotiate an acceptable modification of the contract, the state may terminate the contract.

*State effective: 10/14/1999; EPA effective: 1/21/2005; 69 FR 67819*

## **DIVISION 258**

### **MOTOR VEHICLE FUEL SPECIFICATIONS**

#### **340-258-0010 Definitions**

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies to this division.

(1) "Attest Engagement" means a review of nonfinancial records by a CPA.

(2) "Averaging Period" means the period of time over which all gasoline sold or dispensed for use in a control area by any control area responsible party must comply with the average oxygen content standard.

(3) "Blend" means regular, unleaded, supreme or other trade names for gasoline products containing differing levels of octane.

(4) "Blender Control Area Responsible Party (Blender CAR)" means a person who owns oxygenated gasoline which is sold or dispensed from a control area oxygenate blending facility.

(5) "Bulk gasoline terminal" means a gasoline storage facility which receives gasoline from refineries primarily by pipeline, ship, or barge, and delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck.

(6) "Carrier" means any person who transports, stores, or causes the transportation or storage of gasoline at any

point in the gasoline distribution network, without taking title to or otherwise having ownership of the gasoline and without altering the quality or quantity of the gasoline.

(7) “Control Area” means a geographic area listed in OAR 340-204-0090 in which only gasoline that meets the requirements of OAR 340-258-0110 through 340-258-0310 may be sold or dispensed.

(8) “Control Area Oxygenate Blending Facility” means any facility or truck at which oxygenate is added to gasoline that is intended for use in any control area, and at which the quality and quantity of gasoline is not otherwise altered, except through the addition of deposit-control additives.

(9) “Control Area Responsible Party (CAR)” means a person who owns gasoline and/or oxygenates that is sold or dispensed from a control area terminal.

(10) “Control Area Terminal” means a terminal storage facility that is capable of receiving gasoline in bulk by pipeline or marine vessel, or at which gasoline is altered either in quantity or quality, excluding the addition of deposit control additives. Gasoline that is intended for use in any control area is sold or dispensed into trucks at these control area terminals.

(11) “Control Period” means the period from November 1 through February 29, during which oxygenated gasoline must be sold or dispensed within the control area.

(12) “Department” means the Department of Environmental Quality.

(13) “Distributor” means a person who transports or stores or causes the transportation or storage of gasoline at any point between a gasoline refinery or importer’s facility and any retail outlet or wholesale purchaser-consumer’s facility.

(14) “EPA” means the U.S. Environmental Protection Agency.

(15) “EPA Substantially Similar Ruling” means a fuel or fuel additive for general use in light-duty vehicles manufactured after the model year 1974, that is substantially similar to a fuel or fuel additive used to certify a model year 1975 or newer vehicle or engine under **42 U.S.C. 7525** (Clean Air Act, Section 206), as amended through November 15, 1990 and any amendments or modifications thereto, and as specified in EPA’s Interpretative Ruling at **56 Federal Register 5352 - 5356**, revised through February 11, 1991, and that the EPA has ruled meets the following criteria:

(a) The fuel contains carbon, hydrogen, and any or all of the elements of oxygen, nitrogen, or sulfur exclusively, with the exception of trace levels of impurities which produce gaseous combustion products, in the form of some combination of:

(A) Hydrocarbons;

(B) Aliphatic ethers;

(C) Aliphatic alcohols other than methanol;

(D) Up to 0.3 percent methanol by volume;

(E) Up to 2.75 percent methanol by volume with an equal amount of butanol, or high molecular weight alcohol; or

(F) A fuel additive at a concentration of no more than 0.25 percent by weight which contributes no more than 15 ppm sulfur by weight to the fuel.

- (b) The fuel contains no more than 2.0 percent oxygen by weight, except that fuels containing aliphatic ethers and/or alcohols (except methanol) must contain no more than 2.7 percent oxygen by weight;
- (c) The fuel possesses, at the time of manufacture, the physical and chemical characteristics of an unleaded gasoline as specified by **ASTM Standard D4814-88** for at least one of the Seasonal and Geographical Volatility Classes specified in the standard; and
- (d) The fuel contains only:
- (A) Carbon;
  - (B) Hydrogen; and
  - (C) Any or all of the following elements: oxygen, nitrogen and sulfur.
- (16) “EPA Waiver” means any current motor fuel waivers granted by the U.S. Environmental Protection Agency under authority of **42 U.S.C. 745(f)(4)** (Clean Air Act, Section 211), as amended through November 15, 1990 and any amendments or modifications thereto.
- (17) “Gasoline” means:
- (a) as used in OAR 340-258-0100 through 340-258-0310 any fuel sold for use in motor vehicles and motor vehicle engines and commonly or commercially known or sold as gasoline;
  - (b) as used in OAR 340-258-0400 any petroleum distillate having a Reid vapor pressure of 27.6 kPa (4.0 psi) or greater which is used to fuel internal combustion engines.
- (18) “Motor Vehicle” means any self-propelled vehicle designed and used for transporting persons or property on a street or highway.
- (19) “Nonoxygenated Gasoline” means any gasoline which does not meet the definition of oxygenated gasoline.
- (20) “Oxygen Content of Gasoline Blends” means the percentage of oxygen by weight contained in a gasoline blend, based upon its percentage oxygenate by volume, excluding denaturants and other non-oxygen-containing components. All measurements must be adjusted to 60E F.
- (21) “Oxygenate” means any substance which, when added to gasoline, increases the amount of oxygen in that gasoline blend. Lawful use of any combination of these substances requires that they be “Substantially Similar” under Section 211(f)(1) of the Clean Air Act (CAA), or be permitted under a waiver granted by the Administrator of the Environmental Protection Agency under the authority of Section 211(f)(4) of the CAA.
- (22) “Oxygenate Blender” means a person who owns, leases, operates, controls, or supervises a control area oxygenate blending facility.
- (23) “Oxygenated Gasoline” means any gasoline which when supplied on a per gallon basis contains at least 2.7 percent oxygen by weight, except where otherwise required by OAR 340-258-0310, or which when supplied using the averaging method contains at least 2.0 percent oxygen by weight, and has been included in the oxygenated gasoline program accounting by a control area responsible party and which is intended to be sold or dispensed for use in any control area during a control period.
- (24) “Permitted Control Area Responsible Parties” means any owner of gasoline being imported or sold at or from

a terminal who obtains a terminal operator permit to market gasoline in a control area during the control period.

(25) “Refiner” means a person who owns, leases, operates, controls, or supervises a refinery that produces gasoline for use in a control area.

(26) “Refinery” means a plant at which gasoline is produced.

(27) “Reseller” means a person who purchases gasoline and resells or transfers it to a retailer or wholesale purchaser-consumer.

(28) “Retail Outlet” means any establishment at which gasoline is sold or offered for sale to the ultimate consumer for use in motor vehicles.

(29) “Retailer” means any person who owns, leases, operates, controls, or supervises a retail outlet.

(30) “Substantially Similar” means EPA substantially similar ruling.

(31) “Terminal” means a facility capable of receiving gasoline by pipeline or marine vessel at which gasoline is sold, or dispensed into trucks for transportation to retail outlets or wholesale purchaser-consumer facilities.

(32) “Wholesale Purchaser-Consumer” means any organization that is an ultimate consumer of gasoline and which purchases or obtains gasoline from a supplier for use in motor vehicles and receives delivery of that product into a storage tank of at least 550 gallon capacity substantially under the control of that organization.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

## OXYGENATED GASOLINE

### **340-258-0100 Policy**

The Environmental Quality Commission finds and determines that control area responsible parties, distributors and retail outlets are “Indirect Sources” as defined in OAR 340-254-0030.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-258-0110 Purpose and General Requirements**

(1) Pursuant to ORS 468A.420, OAR 340-258-0100 through 340-258-0310 apply to:

(a) A person who refines, distributes, blends, supplies, sells, offers for sale, or otherwise markets gasoline for use in motor vehicles; and

(b) Permitted control area responsible parties who own gasoline being imported or being sold at or from terminals who market gasoline.

(2) Except as provided in OAR 340-258-0300, the requirements of OAR 340-258-0110 through 340-258-0310 apply only from November 1 to February 29, and only within a control area listed in OAR 340-204-0090.

(3) The labeling requirements of OAR 340-258-0300 apply only within a control area during the control period.

[NOTE: This applies only to the Department rules and a dispenser is still responsible for complying with the disclosure requirements of ORS 646.915.]

(4) To reduce carbon monoxide air pollution from motor vehicles in a control area, OAR 340-258-0110 through 340-258-0310 requires:

(a) The dispensing into gasoline powered motor vehicles of an oxygenated gasoline with an oxygen content that meets the requirements of OAR 340-258-0140 or 340-258-0150, and 340-258-0160, as applicable;

- (b) That a dispenser where an oxygenated gasoline is dispensed be labeled as required by OAR 340-258-0300;
- (c) That oxygenated gasoline be blended as required by OAR 340-258-0170; and
- (d) A person who refines, distributes, blends, supplies, or sells an oxygenated gasoline to meet the recordkeeping and reporting requirements of OAR 340-258-0110 through 340-258-0310.
- (5) Nothing in OAR 340-258-0110 through 340-258-0310 precludes a person from using, refining, distributing, blending, supplying, selling, or otherwise marketing fuel that meets the requirements of OAR 340-258-0110 through 340-258-0310:
- (a) Between March 1 and October 31 in a control area; or
- (b) At any time in any other location statewide.
- (6) Nothing in OAR 340-258-0110 through 340-258-0310 precludes a person from using, refining, distributing, blending, supplying, selling, or otherwise marketing nonoxygenated fuel:
- (a) Between November 1 and February 29 outside of control areas;
- (b) At dispensing facilities where motor vehicles are not fueled.
- (7) Except as provided in OAR 340-258-0230, the following dispensing sites are exempt from OAR 340-258-0110 through 340-258-0310 and may dispense nonoxygenated gasoline in control areas during control periods if fuel will not be used in motor vehicles, including but not limited to: Airports, marinas, saw shops, farms dispensing to farm equipment not used as a motor vehicle, and other facilities not dispensing fuel into motor vehicles.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-258-0120 Sampling and Testing for Oxygen Content**

- (1) To determine compliance with the requirements of OAR 340-258-0110 through 340-258-0310, the oxygen content of gasoline must be determined by:
- (a) Sampling, using the sampling methods specified in **40 CFR 80, Appendix D**, as amended through July 1, 1991, the provisions of which are incorporated by reference in this rule, to obtain a representative sample of the gasoline to be tested;
- (b) Testing, using the test method specified in **ASTM 4815-89** or other test methods determined by the Department and EPA as being equivalent, to determine the mass concentration of each oxygenate in the gasoline sampled; and
- (c) Oxygen content calculations that are made as follows: Calculate the oxygen content of the gasoline sampled by multiplying the volume concentration of each oxygenate in the gasoline sampled by the oxygen molecular weight contribution of the oxygenate set forth in section (2) of this rule, with volume measurements adjusted to 60 degrees F.
- (2) The oxygen molecular weight contributions of an oxygenate approved for use under OAR 340-258-0110 through 340-258-0310 are set out in **Table A**.

<b>TABLE A</b>		
<b>COMPARISON OF SPECIFIC GRAVITIES AND OXYGEN MASS FRACTION OF PURE OXYGENATES</b>		
	<b>Specific Gravity</b>	<b>Oxygen Mass</b>
	<b>60/60 F</b>	<b>Fraction</b>
Methyl Alcohol	0.7963	0.4993
Ethyl Alcohol	0.7939	0.3473
n-Propyl Alcohol	0.8080	0.2662
Isopropyl Alcohol	0.7899	0.2662
n-Butyl Alcohol	0.8137	0.2158
iso-Butyl Alcohol	0.8058	0.2158
sec-Butyl Alcohol	0.8114	0.2158
tertiary-Butyl Alcohol	0.7922	0.2158
Methyl tertiary-Butyl Ether	0.7460	0.1815
Ethyl tertiary-Butyl Ether	0.7452	0.1566
tertiary Amyl Methyl Ether	0.7752	0.1566

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-258-0130 Compliance Options**

Each CAR or blender CAR must comply with applicable oxygen content standards set out in OAR 340-258-0140(1), 340-258-0150(1), and 340-258-0170 by means of either the per gallon compliance option established in OAR 340-258-0140 or the averaging method compliance option established in OAR 340-258-0150.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-258-0140 Per Gallon Oxygen Content Standard**

(1) All gasoline sold or dispensed for use during the control period described in OAR 340-258-0110(2), for use in each control area described in OAR 340-204-0090, by each CAR or blender CAR using the Per Gallon Oxygen Content Standard Compliance Option, must be blended to contain not less than 2.7 percent oxygen by weight, except where otherwise required by OAR 340-258-0310. Oxygen content calculations must be performed as required in OAR 340-258-0120.

(2) Compliance calculation on a per gallon basis:

(a) Each gallon of gasoline sold or dispensed by a CAR or blender CAR for use within each control area during the control period shall have an oxygen content of at least 2.7 percent by weight, except where otherwise required by OAR340-258-0310;

(b)In addition, the CAR or blender CARis prohibited from selling or purchasing oxygen credits based on gasoline for which compliance is calculated under this alternative per gallon method.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-258-0150 Average Oxygen Content Standard**

(1) All gasoline sold or dispensed for use during the control period described in OAR 340-258-0110(2), for use in each control area described in OAR 340-204-0090, by each CAR or blender CAR using the Average Oxygen Content Standard Compliance Option, must be blended for each averaging period to contain an average oxygen content of not less than 2.7 percent by weight, except where otherwise required by OAR 340-258-0310. Oxygen content calculations must be performed as required in OAR 340-258-0120.

(2) The averaging period for all gasoline sold or dispensed in a control area is the four-month control period established in OAR 340-258-0110(2).

(3) Compliance calculation on average basis:

(a) To determine compliance with the standards in section (1) of this rule, the CAR or blender CAR shall, for each averaging period and for each control area:

(A) Calculate the total volume of gasoline sold or dispensed for use in the control area which is the sum of:

(i) The volume of each separate batch or truck load of oxygenated gasoline that is sold or dispensed;

(ii) Minus the volume of each separate batch or truck load of oxygenated gasoline that is sold or dispensed in a different control area;

(iii) Minus the volume of each separate batch or truck load of oxygenated gasoline that is sold or dispensed in any non-control area.

(B) Calculate the required total oxygen credit units. Multiply the total volume in gallons of oxygenated gasoline sold or dispensed into the control area (as determined by paragraph (3)(a)(A) of this rule) by 2.7 percent, except where otherwise required by OAR 340-258-0310;

(C) Calculate the actual total oxygen units generated. The actual total oxygen credit units generated is the sum of the volume of each batch or truck load of oxygenated gasoline that was sold or dispensed in the control area (as determined by paragraph (3)(a)(A) of this rule) multiplied by the actual oxygen content by weight associated with each batch or truck load;

(D) Calculate the adjusted actual total oxygen credit units. The adjusted actual total oxygen content credit units is the sum of the actual total oxygen credit units generated (as determined in paragraph (3)(a)(C) of this rule):

(i) Plus the total oxygen credit units purchased or acquired through trade; and

(ii) Minus the total oxygen credit units sold or given away through trade.

(E) Compare the adjusted actual total oxygen credit units with the required total oxygen credit units. If the adjusted actual total content oxygen credit units is greater than or equal to the required total oxygen credit units, then the standard in section (1) of this rule is met. If the adjusted actual total oxygen credit units is less than the required total oxygen credit units the purchase of oxygen credit units is required in order to achieve compliance;

(F) In transferring oxygen credit units, the transferor shall provide the transferee with the volume and oxygen content by weight of the gasoline associated with the credits.

(b) To determine the oxygen credit units associated with each batch or truck load of oxygenated gasoline sold or dispensed into the control area, use the running weighted oxygen content (RWOC) of the tank from which the batch or truck load was received at the time the batch or truck load was received. In the case of batches or truck

loads of gasoline to which oxygenate is added outside of the terminal storage tank from which it was received, use the weighted average of the RWOC and the oxygen content added as a result of the volume of the additional oxygenate added;

(c) Running weighted oxygen content (RWOC). The RWOC accounts for the volume and oxygen content of all gasoline which enters or leaves the terminal storage tank, and all oxygenates which are added to the tank. The RWOC must be calculated each time gasoline enters or leaves the tank or whenever oxygenates are added to the tank. The RWOC is calculated weighing the following:

- (A) The volume and oxygen content of the gasoline in the storage tank at the beginning of the averaging period;
- (B) The volume and oxygen content by weight of gasoline entering the storage tank;
- (C) The volume and oxygen content by weight of gasoline leaving the storage tank; and
- (D) The volume, type and oxygen content by weight of the oxygenate added to the storage tank.

(d) Credit transfers. Credit transfer may be used in the compliance calculations in subsection (3)(a) of this rule, provided that:

- (A) The credits are generated in the same control area in which they are used; no credits may be transferred between control areas;
- (B) The credits are generated in the same averaging period as they are used;
- (C) The ownership of credits is transferred only between properly registered CARs or blender CARs;
- (D) The credit transfer agreement is made no later than 30 days after the final day of the averaging period in which the credits are generated; and
- (E) The credits are properly created.

(e) Improperly created credits:

(A) No party may transfer any credits to the extent that such a transfer would result in the transferor having a negative credit balance at the conclusion of the averaging period for which the credits were transferred. Any credits transferred in violation of this paragraph are improperly created credits;

(B) In the case of credits which were improperly created, the following subparagraphs apply:

(i) Improperly created credits may not be used, regardless of a credit transferee's good faith belief that it was receiving valid credits;

(ii) The transfer of credits in violation of paragraph (A) of this subsection constitutes a violation of the requirements of section (1) of this rule; and

(iii) Where any credits are transferred in violation of paragraph (A) of this subsection, the transferor's properly-created credits will be applied first to any credit transfers before the transferor may apply any credits to achieve its own compliance;

(iv) Where any credits are transferred in violation of paragraph (A) of this subsection, the transferor shall be held legally and financially liable for any penalties or damages incurred by the transferee as a result of the invalid

transaction.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-258-0160 Minimum Oxygen Content**

(1) Any gasoline sold or dispensed by a CAR or a blender CAR for use within a control area during the control period, must contain not less than the minimum percent oxygen by weight allowed in the Oxygen Content Standard listed below, except where otherwise required by OAR 340-258-0310:

(a) Minimum oxygen content when using the Per Gallon Oxygen Content Standard Compliance Option is 2.7 percent oxygen by weight, unless it is sold or dispensed to another registered CAR or blender CAR. This requirement begins no less than five working days before the control period and applies until the end of that period;

(b) Minimum oxygen content when using the Average Oxygen Content Standard Compliance Option is 2.0 percent oxygen by weight, unless it is sold or dispensed to another registered CAR or blender CAR. This requirement begins at least five working days before the control period and applies until the end of that period.

(2) The requirements of this rule apply to all persons downstream of the CAR. Any gasoline offered for sale, sold or dispensed to an ultimate consumer within a control area must contain not less than:

(a) 2.7 percent oxygen by weight when supplied by a CAR or blender CAR who uses the Per Gallon Oxygen Content Standard Compliance Option, except where otherwise required by OAR 340-258-0310. This requirement applies during the entire control period;

(b) 2.0 percent oxygen by weight when supplied by a CAR or blender CAR who uses the Average Oxygen Content Standard Compliance Option. This requirement applies during the entire control period.

(3) A refiner or importer shall determine the oxygen content of gasoline produced by use of an applicable method described in OAR 340-258-0130. This determination must include the percent oxygenate by weight, the type of oxygenate and percent by volume.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-258-0170 Oxygenated Gasoline Blending**

(1) In addition to the other applicable requirements of OAR 340-258-0110 through 340-258-0310, no person may refine, distribute, blend, supply, sell, offer for sale or otherwise market any unleaded oxygenated gasoline for use in a motor vehicle unless that product:

(a) Has received a waiver from the U.S. Environmental Protection Agency (EPA) under **42 U.S.C. 7545(f)(4)**, as amended through November 15, 1990 and any amendments or modifications thereto; or

(b) Meets EPA's "substantially similar" ruling for a fuel or fuel additive used to certify a model year 1975 or newer vehicle or engine under **42 U.S.C. 7525** (Clean Air Act), as amended through November 15, 1990 and any amendments or modifications thereto.

(2) Only an oxygenate that is found to be acceptable under EPA's "substantially similar" ruling may be used in gasoline containing lead to meet the oxygenate requirements of OAR 340-258-0110 through 340-258-0310.

(3) The requirements of this rule do not affect the blending into leaded gasoline of a compound that does not require an EPA waiver or an EPA "substantially similar" ruling.

(4) Only those oxygenates and concentrations listed below and any gasoline designated by EPA as substantially similar are allowed:

(a) Blends of up to ten percent by volume anhydrous ethanol (200 proof) (commonly referred to as the “gasohol” waiver);

(b) Blends of methanol and gasoline grade tertiary butyl alcohol (GTBA) such that the total oxygen content does not exceed 3.5 percent by weight and the ratio of methanol to GTBA is less than or equal to one. It is also specified that this blended fuel must meet ASTM volatility specifications (commonly referred to as the “ARCO” waiver);

(c) Blends of up to 5.0 percent by volume methanol with a minimum of 2.5 percent by volume cosolvent alcohols having a carbon number of four or less (i.e., ethanol, propanol, butanol and/or GTBA). The total oxygen must not exceed 3.7 percent by weight, and the blend must meet ASTM volatility specifications as well as phase separation and alcohol purity and inhibitor specifications (commonly referred to as the “DuPont” waiver);

(d) Blends up to 5.0 percent by volume methanol with a minimum of 2.5 percent by volume cosolvent alcohols having a carbon number of eight or less. The total oxygen must not exceed 3.7 percent by weight and the blend must meet ASTM volatility specifications as well as phase separation and alcohol purity and inhibitor specifications (commonly referred to as the “Octamix” waiver);

(e) Blends up to 15.0 percent by volume methyl tertiary butyl ether (MTBE) which must meet the ASTM D4614 specifications. Blenders must take precautions that the blends are not used as base gasolines for other oxygenated blends (commonly referred to as the “Sun” waiver);

(f) Blends of aliphatic alcohols other than methanol and aliphatic ethers, provided the oxygen content does not exceed 2.7 percent by weight;

(g) Blends of methanol up to 0.3 percent by volume exclusive of other oxygenates;

(h) Blends up to 2.75 percent by volume methanol with an equal volume of butanol or alcohols of a higher molecular weight.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-258-0180 Registration**

(1) At least 30 days before the control period in which a person meets the definition of CAR or blender CAR, that person shall petition for registration as a CAR or blender CAR. A person may petition for registration as a CAR or blender CAR after the beginning of the control period but should also do so at least 30 days before conducting activities as a CAR or blender CAR. A petition for registration must be on forms approved by, and available from the Department, and must include:

(a) The name and business address of the control area responsible party;

(b) The address and physical location of each of the control area terminals from which the control area responsible party operates;

(c) The address and physical location of each control area oxygenate blender facility which is owned, leased, operated, controlled or supervised by a blender CAR; and

(d) The address and physical location where documents required to be retained by this rule will be kept by the control area responsible party.

(2) Within 30 days after any occasion when the registration information previously supplied by a control area responsible party becomes incomplete or inaccurate, the CAR or blender CAR shall submit updated registration information to the Department.

(3) The Department will issue each CAR or blender CAR a unique identification number within 30 days after submission of a registration application to the Department. No person may participate in the averaging program under OAR 340-258-0150 as a CAR or blender CAR until the Department has issued notice that registration as a CAR or blender CAR has occurred, and a unique CAR identification number. Registration is valid for the time period specified by the Department.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-258-0190 CAR, Distributor and Retail Outlet Operating Permits**

Each CAR, distributor and retail outlet supplying gasoline to a control area during a control period shall apply for and receive a permit as specified by OAR 340-258-0200.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-258-0200 Owners of Gasoline at Terminals, Distributors and Retail Outlets Required to Have Indirect Source Operating Permits**

The owner of gasoline at any gasoline terminal, distributor or retail outlet (defined in OAR 340-258-0010) shall not supply gasoline to any oxygenated gasoline control area during the control period (defined in OAR 340-258-0010) without an approved Indirect Source Operating Permit issued by the Department or Regional Authority having jurisdiction:

(1) An Indirect Source Operating Permit must be renewed yearly, prior to supplying any gasoline to an oxygenated gasoline control area during the control period.

(2) Persons applying for an Indirect Source Operating Permit shall at the time of application pay the following fees:

(a) Gasoline Terminals — \$2,500;

(b) Gasoline Distributors — \$250.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-258-0210 Recordkeeping**

(1) All persons in the gasoline distribution network shall maintain records containing the applicable compliance information described in this rule. The records must be kept by the regulated persons for at least two years:

(2) Refiners and importers shall, for each separate quantity of gasoline produced or imported for use in a control area during the control period, maintain records containing results of any tests needed to determine the types of oxygenates and percentage by volume:

(a) Oxygenate type;

(b) Oxygenate content by volume;

(c) Oxygen content by weight;

(d) Total volume; and

(e) Name and address of the party to whom each separate quantity of gasoline was sold or transferred.

(3) A person who owns, leases, operates or controls a gasoline terminal that serves a control area shall maintain records containing:

(a) The name and address of the owner of each batch of gasoline handled during the control period;

(b) The volume of each batch or truck load of gasoline going into or out of the terminal;

(c) The RWOC of all batches or truck loads of gasoline leaving the terminal;

(d) The type of oxygenate, purity and percentage by volume if available;

(e) The oxygen content by weight of all batches or truck loads received at the terminal;

(f) Information of each tank truck sale or batch of gasoline, as to whether it was designated for use within a control area or not;

(g) The name and address of the person to whom the gasoline was sold or transferred and the date of the sale or transfer; and

(h) Results of the tests for oxygenates, if performed, of each sale or transfer and who performed the tests.

(4) CARs and blender CARs must maintain records containing the information listed in section (3) of this rule, plus the following information:

(a) CAR or blender CAR identification number;

(b) Records supporting and demonstrating compliance with the Per Gallon Oxygen Content Standard listed in OAR340-258-0140; or

(c) Records supporting and demonstrating compliance with the Average Oxygen Content Standard listed in OAR 340-258-0150:

(A) For any credits bought, sold, traded or transferred, the date of each transaction, the name, address and CAR or blender CAR number of the CAR or blender CAR involved in each transaction, and the amount of credit units (oxygen content and volume of gasoline) transferred; credit units transferred must be accompanied by a demonstration of how those credits were calculated, including adequate documentation that both parties have agreed to all credit transactions;

(B) The name and address of the auditor, and the results of the attest engagement conducted under OAR 340-258-0290;

(C) The name and address of the person from whom each shipment of gasoline was received, and the date when it was received;

(D) Data on each shipment of gasoline received, including:

(i) The volume of each shipment;

(ii) The type of oxygenate, purity and percentage by volume; and

- (iii) Oxygen content by weight.
  - (E) The volume of each receipt of bulk oxygenates;
  - (F) The name and address of the persons from whom bulk oxygenates was received;
  - (G) The date and destination of each sale of gasoline, whether it was intended for use within a control area or not;
  - (H) Data on each shipment of gasoline sold or dispensed including:
    - (i) The volume of each shipment;
    - (ii) The type of oxygenate, purity and percentage by volume; and
    - (iii) Oxygen content by weight.
  - (I) Documentation of the results of all required tests done regarding the oxygen content of the gasoline; and
  - (J) The names, addresses and CAR or blender CAR identification numbers of the persons to whom any gasoline was sold or dispensed, and the dates of each transaction.
- (5) Retailers and wholesale purchaser-consumers within a control area shall maintain the following records which shall be available for Department inspection upon request:
- (a) The names, addresses and CAR or blender CAR identification number of each person from whom a shipment of gasoline was purchased or received, and the date when each shipment was received; and
  - (b) Data on each shipment bought, sold or transported including:
    - (A) The volume of each shipment;
    - (B) The type of oxygenate, purity and percentage by volume;
    - (C) Oxygen content by weight.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-257-0220 Reporting**

(1) Each CAR or blender CAR shall submit a report for each control period defined in OAR 340-258-0110(2), reflecting the compliance information detailed in OAR 340-258-0140 or 340-258-0150, as applicable. Reports are due to the Department on the 30th day of the month following the close of the control period for which the information is required. Reports must be filed on forms provided by the Department.

(2) If the CO Contingency Provision, as specified in OAR340-258-0310, is triggered, each CAR or blender CAR shall submit the information described in section (1) of this rule after the first half of the control period and at the end of the control period. Reports are due to the Department on the 30th day of the month following the end of each two month segment of the control period.

(3) Each time that physical custody or title of gasoline destined for a control area is transferred, except when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility, the transferor shall provide to the transferee, in addition to, or as part of, normal bills of lading or invoices, a transfer document containing information on the shipment. The transfer document must accompany every shipment of gasoline to a control area after it has been dispensed by a terminal, or the information must be included in the normal paperwork that accompanies each shipment of gasoline. The information must legibly and

conspicuously contain the following information:

- (a) The date of the transfer;
- (b) The name, address and CAR or blender CAR identification number, if applicable of the transferor;
- (c) The name, address and CAR or blender CAR identification number, if applicable, of the transferee;
- (d) The volume of gasoline being transferred;
- (e) The proper identification of the gasoline as nonoxygenated or oxygenated;
- (f) The location of the gasoline at the time of the transfer;
- (g) The type of oxygenate and purity;
- (h) The percentage by volume, to the nearest 0.1 percent, of oxygenate in the fuel; and
- (i) For gasoline in the gasoline distribution network between the refinery or import facility and the covered area terminal, the oxygen content by weight and the oxygenate volume of the gasoline.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-258-0230 Prohibited Activities**

(1) During the control period, no refiner, importer, oxygenate blender, carrier, distributor or reseller may manufacturer, sell, offer for sale, dispense, supply, offer for supply, store, transport or cause the transportation of:

- (a) Gasoline that contains less than 2.0 percent oxygen by weight, for use during the control period, in a control area; or
- (b) Gasoline represented as oxygenated which has an oxygen content that is improperly stated in the documents that accompany the gasoline.

(2) No retailer or wholesale purchaser-consumer may dispense, offer for sale, sell, or store, for use during the control period, gasoline that contains less than 2.7 percent oxygen by weight in a control area when supplied by a CAR using the Per Gallon Oxygen Content Standard or less than 2.0 percent oxygen by weight in a control area when supplied by a CAR using the Average Oxygen Content Standard.

(3) No person may operate as, or claim to be a CAR or blender CAR unless that person is registered by the Department under OAR 340-252-0180. No CAR or blender CAR may offer for sale, store, sell or dispense gasoline to any person who is not registered as a CAR for use in a control area, unless:

(a) The oxygen content of the gasoline during the control period or averaging period meets the standard set in OAR 340-258-0140 or 340-258-0150, and OAR 340-258-0160, as applicable; and

(b) The gasoline contains at least:

(A) 2.7 percent oxygen by weight when the Per Gallon Oxygen Content Standard is used, except as required by OAR 340-258-0310;

(B) 2.0 percent oxygen by weight when the Average Oxygen Content Standard is used.

(4) For a terminal that sells or dispenses gasoline intended for use in a control area during the control period, the

terminal owner or operator may not accept gasoline into the terminal unless:

- (a) Transfer documentation accompanies it containing information required by OAR 340-258-0220(3); and
- (b) The terminal owner or operator conducts a quality assurance program to verify the accuracy of the information referred to in subsection (a) of this section.

(5) No person may sell, store or dispense nonoxygenated gasoline in any control area during the control period unless:

- (a) The nonoxygenated gasoline is segregated from oxygenated gasoline;
- (b) Clearly marked documents accompany the nonoxygenated gasoline marking it as **“nonoxygenated gasoline, not for sale to an ultimate consumer in a control area”**; and
- (c) The nonoxygenated gasoline is in fact not sold or dispensed to ultimate consumers during the control period, in the control area.

(6) No person subject to the requirements of OAR 340-258-0110 through 340-258-0310 may fail to comply with the requirements of OAR 340-258-0110 through 340-258-0310.

(7) No person may sell, store, dispense, or transfer oxygenated gasoline, except for use by the ultimate consumer at a retail outlet or wholesale purchaser-consumer facility, without transfer documents that accurately contain the information required by OAR 340-2582-0220(3).

(8) Any CAR, distributor or retail outlet that does not have a valid terminal permit may not market gasoline for use in a control area during the control period unless a prior owner of the gasoline has a valid terminal permit as required by OAR 340-258-0200.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-258-0240 Inspection and Sampling**

With consent of the owner or operator, the Department will, at any reasonable time, enter the premises of any person subject to the requirements of OAR 340-258-0110 through 340-258-0310 to determine compliance. The Department will inspect all relevant records and equipment, and will, in its discretion, purchase gasoline samples for testing by the Department.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-258-0250 Liability for Violation of a Prohibited Activity**

(1) Subject to OAR 340-258-0260, if gasoline contained in a storage tank at a facility owned, leased, operated, controlled or supervised by a retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, importer or oxygenate blender is found to be in violation of OAR 340-258-0230(1)(a) or (2), the following persons will be considered in violation:

- (a) The retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, importer or oxygenate blender who owns, leases, operates, controls or supervises the facility where the violation is found; and
- (b) Each oxygenate blender, distributor, reseller and carrier who, downstream of the control area terminal, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported or caused the transportation of gasoline that is in the storage tank containing gasoline found to be in violation.

(2) Subject to OAR 340-258-0260, if gasoline contained in a storage tank at a facility owned, leased, operated,

controlled or supervised by a retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, importer or oxygenate blender is found to be in violation of OAR 340-258-0230(1)(b) or (2), the following persons will be considered in violation:

(a) The retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, importer or oxygenate blender who owns, leases, operates, controls or supervises the facility where the violation is found; and

(b) Each refiner, importer, oxygenate blender, distributor, reseller and carrier who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported or caused the transportation of gasoline that is in the storage tank containing gasoline found to be in violation.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-258-0260 Defenses for Prohibited Activities**

(1) A refiner, importer, oxygenate blender, distributor, reseller or carrier is considered to be in violation of OAR 340-258-0230(1) unless that person demonstrates that:

(a) The violation was not caused by the regulated person or that person's employee or agent;

(b) The person possesses documents that should accompany the gasoline, and that contain the information required by OAR 340-258-0220;

(c) The person conducts a quality assurance sampling and testing program as described in OAR 340-258-0280; and

(2) A refiner, importer, oxygenate blender, distributor, reseller or carrier is considered to be in violation of OAR 340-258-0230(5) unless that person demonstrates that:

(a) The product is clearly labeled as **“blendstock/export/storage”** and the evidence supports this classification;

(b) The accompanying documents clearly state that the product does not comply with the oxygenated gasoline requirements;

(c) Some aspect of the product's quality supports the party's claim that the product was intended to be further blended before being sold, supplied, etc., as a finished product;

(d) The seller, supplier or transporter of the product has obtained a written certification or notice on shipping documents from the buyer/recipient of the product that the buyer/recipient understands that the product is not intended for sale or distribution as finished gasoline in a control area or until:

(A) It is blended to meet the oxygenated gasoline requirements of OAR 340-258-0110 through 340-258-0310; or

(B) The buyer/recipient receives equivalent certification from a subsequent buyer or obtains a written certification that the gasoline will not be sold or dispensed for use within a control area; and

(e) The party has no knowledge or reason to believe that the product will not be further blended to comply with the standards of OAR 340-258-0140 or 340-258-0150, and 340-258-0160 before being sold, supplied or transported as finished product, or that it would be sold or dispensed without further blending within a control area.

(3) A retailer or wholesale purchaser-consumer is considered to be in violation of OAR 340-258-0230(2) unless that person demonstrates that:

(a) The violation was not caused by the regulated person or that person's employee or agent;

(b) The person possesses documents that should accompany the gasoline, and that contain the information required by OAR 340-258-0220.

(4) For purposes of this rule, the term "was caused" means that the person must demonstrate by a preponderance of the evidence through reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another person.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340258-0270 Inability to Produce Conforming Gasoline Due to Extraordinary Circumstances**

The Department will allow a person to distribute fuel which does not meet the oxygenated gasoline requirements of OAR 340-258-0110 through 340-258-0310 in appropriate extreme and unusual circumstances which are clearly outside the control of the blender CAR and which could not have been avoided by the exercise of prudence, diligence and due care if:

(1) It is in the public interest to do so because distribution of the nonconforming fuel is necessary to meet projected shortfalls which cannot otherwise be compensated for;

(2) The blender CAR exercised prudent planning and was not able to avoid the violation and has taken all reasonable steps to minimize the extent of the nonconformity;

(3) The blender CAR can show how the requirements for oxygenated gasoline will be expeditiously achieved; and

(4) The blender CAR agrees to make up the air quality detriment associated with the nonconforming gasoline, where practicable.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-258-0280 Quality Assurance Program**

To demonstrate an acceptable quality assurance program under this rule, a person shall conduct periodic sampling and testing to determine if the oxygenated gasoline has oxygen content that is consistent with the product transfer documentation.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-258-0290 Attest Engagements Guidelines When Prohibited Activities Alleged**

(1) The Department will not require a CAR or blender CAR to submit attest engagement reports except as an optional defense for any alleged violations of OAR 340-258-0110 through 340-258-0310.

(2) The attest engagement shall consist of performing the agreed-upon procedures set forth in the guidelines in accordance with the Association of Independent Certified Public Accountants' (AICPA's) statements on standards for Attestation Engagements and using statistical sample design parameters provided by EPA.

(3) In performing the attest engagement, the CPA shall determine the sample size for each population according to parameters set out in **Table B**.

## **TABLE B**

### **Number in Population (N) — Sample Size**

66 or larger — 59

41 - 65 — 41

26 - 40 — 31

0 - 25 — N or 24, whichever is smaller

(4) The number of populations from which samples should be drawn will vary depending on the circumstances. Sample items should be selected in such a way that the sample can be expected to be representative of the population.

(5) If the CPA agrees to use some other form of sample selection and some other method to determine the sample size, that agreement should be summarized in the CPA's report.

(6) The attest engagement shall be conducted by an independent Certified Public Accountant (CPA).

(7) The CPA is required to comply with the general code of conduct and ethics as prescribed by the State of Oregon and by the AICPA.

(8) The attest engagement shall include the following agreed-upon procedures, as appropriate, for the CAR's standardized reporting form(s):

(a) Read the report completed by management and filed with the Department;

(b) Obtain from the CAR an inventory reconciliation summarizing receipts and deliveries of all gasoline, gasoline blendstocks, and oxygenates for CARs serving a control area:

(A) Test mathematical accuracy of inventory reconciliation;

(B) Agree beginning and ending inventory amounts to company's perpetual inventory records;

(C) Agree deliveries into the control area to Department report, if applicable.

(c) Obtain listing of all gasoline, gasoline blendstocks, and oxygenate receipts during the period:

(A) Test mathematical accuracy of listing;

(B) Agree amounts to inventory reconciliation;

(C) Select a representative sample of individual receipts of gasoline, gasoline blendstocks, and oxygenates and trace details back to source documents.

(d) Obtain listing of all gasoline, gasoline blendstocks, and oxygenates sold or dispensed during the period:

(A) Test mathematical accuracy of listing;

(B) Agree amounts to inventory reconciliation report;

(C) Select a representative sample of individual batches sold or dispensed both into and outside the control area:

(i) Agree volumes for the sample items to original bill of lading or other source documents;

(ii) For sales or deliveries into the control area, determine that oxygenate content is at least two percent by examining bills of lading.

- (e) Using the volume of oxygenated gasoline sold or dispensed into the control area from the inventory reconciliation report, recalculate the number of oxygen content units required by multiplying by 2.7 percent, except where otherwise specified in OAR340-258-0310, and agree to Department report;
- (f) Recalculate the actual total oxygen credit units generated by adding the oxygen content of each batch or truck load of oxygenated gasoline that was sold or dispensed in the control area as determined in subsection (8)(e) of this rule multiplied by the actual oxygen content by weight associated with each batch or truck load;
- (g) Recalculate the adjusted actual total oxygen credit units as follows:
- (A) The actual total oxygen credit units generated from subsection (8)(f) of this rule;
  - (B) Plus the total oxygen credit units purchased or acquired through trade; and
  - (C) Minus the total oxygen credit units sold or given away through trade.
- (h) The following steps apply to the testing of the actual total oxygen content from subsection (8)(f) of this rule and are applicable based on method of blending:
- (A) For CARs using rack- and truck-blending, recompute oxygen content by weight for a representative sample of deliveries based on detailed meter readings of gasoline, blendstocks and oxygenate receipts;
  - (B) For CARs using in-tank blending of gasoline, blendstocks and oxygenates, obtain register of running weighted oxygen content by tank and:
    - (i) Using the individual sample items from subsections (8)(c) and (d) of this rule test calculation of running totals;
    - (ii) Where laboratory analysis is used with the CARs weighted average calculation, select individual analysis reports of oxygenated gasoline receipts and deliveries during the period on a representative sample basis:
      - (I) Review laboratory results for consistency with CAR's calculations noting oxygen volume and specific gravity;
      - (II) Recalculate oxygen by weight;
      - (III) Agree information on lab reports to underlying delivery and receiving documentation.
- (i) Obtain register of oxygen credit unit purchases and sales and select separate representative samples of individual purchased credits and individual sales credits:
- (A) Agree selected credit unit transactions to the underlying contract and/or other supporting documentation noting specific volumes and oxygen content of the gasoline associated with the credits;
  - (B) Agree to the underlying contract and/or supporting documentation that the credits are generated in the same control areas as they are used. For example, no credits may be transferred between control areas;
  - (C) Agree to the underlying contract and/or supporting documentation that the credits are generated in the same averaging period as they are used;
  - (D) Agree to the underlying contract and/or supporting documentation that the ownership of credits is transferred only between CARs;

(E) Agree to the underlying contract and/or supporting documentation that the credit transfer agreement was made no later than 30 days after the final day of the averaging period in which the credits are generated.

(j) Prepare a report to client in accordance with the report provisions of Statements on Standards for Attestation Engagements indicating results of performing the above procedures.

(9) The attestation report must be in compliance with the AICPA's Statement on Standards for Attestation Engagements.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-258-0300 Dispenser Labeling**

(1) A person who sells or markets oxygenated gasoline at retail, or who otherwise provides oxygenated gasoline for consumption by an ultimate consumer, shall place two labels on a dispenser used to dispense the gasoline to identify the oxygenate in the fuel, using the following criteria:

(a) The first label must include the following statement: **“The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles”**;

(b) The second label must contain the type of oxygenate(s) and the exact (plus or minus 0.5 percent) or maximum use concentration by volume. Only those oxygenates and concentrations listed below and any gasoline designated by EPA as substantially similar are allowed.

[NOTE: This applies only to the Department rules and dispenser is still responsible for complying with the disclosure requirements of ORS 646.915.]

(c) Lettering on the label must be legible and in block style of at least 20 point bold type;

(d) The lettering on the label shall be in a color contrasting to the intended background;

(e) The label must be placed on each side of the dispenser from which the gasoline can be dispensed and shall be on the upper one half of the dispenser, in a position that will be clear and conspicuous to the consumer.

(2) A person who pursuant to OAR340-258-0110(7) dispenses nonoxygenated gasoline in a control area during the control period at a site where motor vehicles may have access must display a label in accordance to the standards above containing the following information: **“This fuel is not oxygenated to State of Oregon standards and may not be dispensed into motor vehicles”**.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-258-0310 Contingency Provision for Carbon Monoxide Nonattainment Areas**

(1) Subsections (a), (b), (c) and (d) of this section apply to OAR 340-258-0100 through 340-258-0300:

(a) Upon determination by the Department, or written notification to the Department by the EPA Administrator that a carbon monoxide nonattainment area in a control area, as specified in OAR340-204-0090, fails to meet an applicable Clean Air Act deadline for attainment of the NAAQS for carbon monoxide, the following provisions shall become applicable in such control areas within eight months of written notification by the Department or the EPA Administrator, whichever is sooner:

(A) Oxygenates shall be supplied at maximum EPA approved oxygen content levels during the control period (e.g., 3.5percent for gasoline oxygenated with ethanol and 2.7 percent for gasoline oxygenated with MTBE);

(B) Compliance calculations shall be based on the per gallon oxygen content supplied by each CAR or blender CAR during the control period.

(b) At the end of each control period during which fuel meeting requirements of subsection (1)(a) of this rule is supplied, the Department will evaluate control area oxygenate mix information which is submitted by CARs and blender CARs in accordance with OAR 340-258-0220. If the Department projects, based on this data, that the average oxygen content of gasoline supplied in a control area will be less than 3.1 percent in the next control season, the Department shall notify affected parties no later than March 1 and the following additional requirements shall become effective in subsequent control periods:

(A) The average oxygen content standard of gasoline for CARs or blender CARs using the Average Oxygen Content Standard Compliance Option, shall be increased to a minimum of 2.9 percent;

(B) The oxygen content standard of gasoline for CARs and blender CARs using the Per Gallon Oxygen Content Standard Compliance Option, shall be increased to a minimum of 2.9 percent;

(C) Compliance calculations and the calculation of oxygen credit units, where applicable, shall be based on an oxygen content of 2.9 percent.

(c) Federal standards for percent by volume oxygenate content may not be exceeded and shall not be affected by any requirement under section (1) of this rule;

(d) This rule shall be applicable during the control period specified in OAR 340-258-0110(2).

**NOTE:** OARs affected by this provision include: OAR 340-258-0010, 340-258-0140(1) and (2); 340-258-0150(1) and (3)(a)(B), 340-258-0160(1)(a) and (2)(a), 340-258-0220, 340-258-0230(3)(b)(A), and 340-258-0290(8)(e).

(2) The Department may propose to the Environmental Quality Commission the adoption of an equivalent alternative program to achieve necessary carbon monoxide emission reductions as a substitute for measures outlined in subsection (1)(a) of this rule. An alternative carbon monoxide contingency plan which is adopted by the Commission shall not become effective until approved by the EPA as a SIP revision.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

## STANDARD FOR AUTOMOTIVE GASOLINE

### **340-258-0400 Reid Vapor Pressure for Gasoline**

(1) No person shall sell or supply as a fuel for motor vehicles any gasoline which does not comply with the requirements of 40 CFR 80.

(2) The Reid Vapor Pressure of gasoline sold or supplied, by bulk gasoline terminals and gasoline refiners, as fuel for motor vehicles shall be measured according to the procedures established in the most current method of **ASTM D323**:

(a) The geographic coverage of this section shall be consistent with boundary specified in **ASTM D439**, specifically all of Oregon, west of 122 degrees Longitude;

(b) Test results from samples submitted to the Department by refiners or distributors of gasoline shall be sampled and tested pursuant to methods established by the most current method of **ASTM D323**. Analysis of all fuel from pipeline, tanker, or other sources outside of the state shall be summarized and forwarded to the Department on a monthly basis. Such reports will be supplied on a form supplied by the Department;

(c) The Department reserves the right to audit records and to sample gasoline for the purposes of compliance. Samples of petroleum shall be sampled pursuant and tested by methods established by the most current method of **ASTM D323** or by methods established under the California Air Resources rule, **Title 13, §2251** or **Part 80** of

**Title 40 of the Code of Federal Regulations — Fuel and Fuel Additives.**

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

**DIVISION 262**

**HEAT SMART PROGRAM FOR RESIDENTIAL WOODSTOVES AND OTHER SOLID FUEL HEATING DEVICES**

**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.

*State effective: 3/15/2011; EPA effective: 7/22/2013; 78 FR 37124*

**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 0.32lbs/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) Fireplaces;

(b) Antique stoves;

(c) Pellet stoves;

(d) Masonry heaters;

(e) Central, wood-fired furnaces;

(f) Saunas; and

(g) Boilers subject to 40 CFR part 63, subpart DDDDD or subpart JJJJJ, as in effect on February 16, 2012 that obtain construction approval under OAR 340-210-0205 through 340-210-0250.

(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.

*State effective: 5/17/2012; EPA effective: 7/22/2013; 78 FR 37124*

### **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.

*State effective: 3/15/2011; EPA effective: 7/22/2013; 78 FR 37124*

### **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

(b) The device is 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) Exempt devices. Cookstoves are exempt from this rule in addition to those devices that are not considered solid fuel burning devices as defined in OAR 340-262-0450(24).

(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.

*State effective: 5/17/2012; EPA effective: 7/22/2013; 78 FR 37124*

### **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.

*State effective: 3/15/2011; EPA effective: 7/22/2013; 78 FR 37124*

### **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 PM2.5 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:

(B) 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);

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

(D) 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 PM2.5 nonattainment areas. The program must designate a:

(a) *Stage I advisory* when the PM10 or PM2.5 standard is being approached; and

(b) *Stage II advisory* when an exceedance of the PM10 or PM2.5 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.

*State effective: 3/15/2011; EPA effective: 7/22/2013; 78 FR 37124*

### **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;
  - (b) 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.  
*State effective: 3/15/2011; EPA effective: 7/22/2013; 78 FR 37124*

### **340-262-1000 Wood Burning Contingency Measures for PM2.5 Nonattainment Areas**

#### **(1) Applicability**

This rule applies to any area classified as a nonattainment area for PM2.5 that does not achieve attainment by the applicable Clean Air Act deadline.

(2) No owner of a residential solid fuel burning device shall allow the appliance to burn creating opacity greater than 20% opacity for more than three minutes in any 60-minute period including startup time.

*State effective: 12/11/2012; EPA effective: 6/16/2016; 81 FR 36176*

## **DIVISION 264**

### **RULES FOR OPEN BURNING**

#### **340-264-0010 How to Use These Open Burning Rules**

(1) This Division classifies all open burning into one of seven classes: Agricultural; Commercial; Construction; Demolition (which includes land clearing); Domestic (which includes burning commonly called "backyard burning" and burning of yard debris); Industrial; or Slash. Except for field burning within the Willamette Valley regulated through OAR Chapter 340, Division 266 and slash burning administered by the forest practices smoke management plan of the Oregon Department of Forestry, this Division prescribes requirements for and prohibitions of open burning for every location in the state. Generally, if a class of open burning is not specifically prohibited in a given location, then it is authorized subject to OAR 340-264-0050 and 340-264-0060 and the requirements and prohibitions of local jurisdictions and the State Fire Marshal. In addition, some practices specifically mentioned in OAR 340-264-0040 are exempted from this Division.

#### **(2) Organization of rules:**

(a) OAR 340-264-0020 is the Policy statement of the Environmental Quality Commission setting forth the goals of this Division;

(b) OAR 340-264-0030 contains definitions of terms that have specialized meanings within the context of this Division;

(c) OAR 340-264-0040 lists specific types of open burning and practices that are not governed by this Division;

(d) OAR 340-264-0050 lists general requirements that usually apply to any open burning governed by this Division;

- (e) OAR 340-264-0060 lists general prohibitions that apply to most open burning;
  - (f) OAR 340-264-0070 establishes the open burning schedule based on air quality and meteorological conditions as required by ORS 468A.570;
  - (g) OAR 340-264-0075 allows the delegation of some or all of the open burning authority to be administered by a local jurisdiction;
  - (h) OAR 340-264-0078 contains the legal description of Open Burning Control Areas and maps that generally depict these areas;
  - (i) OAR 340-264-0080 indexes each county of the state to a specific rule giving specific restrictions for each class of open burning applicable in the county;
  - (j) OAR 340-264-0100 through 340-264-0170 are rules that give specific restrictions to open burning for each class of open burning in the counties named in each rule;
  - (k) OAR 340-264-0180 provides for a letter permit authorization for open burning under certain circumstances in which open burning otherwise would be prohibited;
  - (l) OAR 340-264-0190 establishes criteria for use of forced-air pit incineration.
- (3) Use of this Division will be made easier by the following procedure:
- (a) Read OAR 340-264-0050 and 340-264-0060 to understand general requirements and prohibitions that apply to all burning governed by this Division;
  - (b) In OAR 340-264-0030 read the definitions of Agricultural, Commercial, Construction, Demolition, Domestic and Industrial open burning plus the definitions of land clearing and yard debris to determine the type of burning of concern. Also read OAR 340-264-0040 to determine if the type of burning is exempted from this Division;
  - (c) Locate the rule (OAR 340-264-0100 through 340-264-0170) that governs the county in which burning is to take place. OAR 340-264-0090 is an index to the county rules;
  - (d) Read the sections of the county rules that apply to the type of burning to be accomplished;
  - (e) If not prohibited by this Division, obtain a fire permit from the fire district, county court or county commissioners before conducting any burning;
  - (f) If the type of burning proposed is prohibited by this Division, refer to OAR 340-264-0180 (Letter Permits) or 340-363-0190 (Forced-Air Pit Incinerators) for a possible alternative.

*State effective: 12/15/2000; EPA effective: 5/28/2013; 78 FR 24347*

### **340-264-0020 Policy**

In order to restore and maintain the quality of the air resources of the state in a condition as free from air pollution as is practicable, consistent with the overall public welfare of the state, it is the policy of the Environmental Quality Commission:

- (1) To eliminate open burning disposal practices where alternative disposal methods are feasible and practicable;
- (2) To encourage the development of alternative disposal methods;

- (3) To emphasize resource recovery;
- (4) To regulate specified types of open burning;
- (5) To encourage utilization of the highest and best practicable burning methods to minimize emissions where other disposal practices are not feasible; and
- (6) To require specific programs and timetables for compliance with this Division.

*State effective: 12/15/2000; EPA effective: 5/28/2013; 78 FR 24347*

### **340-264-0030 Definitions**

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies to this division.

(1) "Agricultural Burning for Disease or Pest Control" means open burning of waste infected or infested with a disease or pest for which the County Extension Service or Oregon Department of Agriculture identify as having no other practicable control.

(2) "Agricultural Operation" means an activity on land currently used or intended to be used primarily for the purpose of obtaining a profit in money by raising, harvesting and selling crops or by raising - and selling livestock or poultry, or the produce thereof, which activity is necessary to serve that purpose. Agricultural operation also means activities conducted by not-for-profit agricultural research organizations, which activities are necessary to serve that purpose. It does not include the construction and use of dwellings customarily provided in conjunction with the agricultural operation.

(3) "Agricultural Open Burning" means the open burning of any agricultural waste, except as provided in OAR 340-264-0040(5).

(4) "Agricultural Waste" means any waste material generated or used by an agricultural operation, excluding those materials described in OAR 340-264-0060(3).

(5) "Animal Disease Emergency" means the occurrence of a disease that the Oregon Department of Agriculture determines potentially serious economic implications for the livestock industries of this state.

(6) "Auxiliary Combustion Equipment" includes, but is not limited to, fans or air curtain incinerators.

(7) "Combustion Promoting Materials" include, but are not limited to, propane, diesel oil, or jellied diesel.

(8) "Commercial Open Burning" means the open burning of commercial waste.

(9) "Commercial Waste" means:

(a) Any material except:

(A) Agricultural waste;

(B) Construction waste;

(C) Demolition waste;

(D) Domestic waste;

(E) Industrial waste; and

(F) Slash.

(b) Examples of commercial waste are waste material from offices, wholesale or retail yards and outlets, warehouses, restaurants, mobile home parks, domestic waste removed from the property of origin, and dwellings containing more than four family living units, such as apartments, condominiums, hotels, motels or dormitories.

(10) "Commission" means the Environmental Quality Commission.

(11) "Construction Open Burning" means the open burning of any construction waste.

(12) "Construction Waste" means any waste material generally used for, resulting from or produced by a building or construction project. Examples of construction waste are wood, lumber, paper, crating and packing materials processed for or used during construction, materials left after completion of construction, and materials collected during cleanup of a construction site.

(13) "Daylight hours" means the time between 7:30 a.m. and two hours before sunset.

(14) "Demolition Open Burning" means the open burning of demolition waste.

(15) "Demolition Waste" means any material resulting from or produced by the complete or partial destruction or tearing down of any man-made structure, or the clearing of any site for land improvement or cleanup, excluding yard debris (domestic waste) and agricultural waste.

(16) "Department" means the Department of Environmental Quality.

(17) "Director" means the Director of the Department or delegated employee representative pursuant to ORS 468.045(3).

(18) "Domestic Open Burning" means the open burning of any domestic waste.

(19) "Domestic Waste" means household waste material, which includes paper, cardboard, clothing, yard debris, or other material generated in or around a dwelling of four-or-fewer-family-living units, or on the real property appurtenant to the dwelling. Such waste materials generated in or around a dwelling of more than four-family-living units are commercial wastes. Once domestic waste is removed from the property of origin, it becomes commercial waste.

(20) "Fire Hazard" means the presence or accumulation of combustible material of such nature and in sufficient quantity that its continued existence constitutes an imminent and substantial danger to life, property, public welfare, or adjacent lands.

(21) "Forced-Air Pit Incineration" means any method or device by which burning is accomplished in a subsurface pit or above-ground enclosure using:

(a) Combustion air supplied under positive draft by an air curtain; and

(b) Combustion air controlled in order to optimize combustion efficiency and minimize the emission of air contaminants.

(22) "Hazard to public safety" means fires that burn prohibited materials or result in smoke that substantially impairs visibility on a roadway.

(23) "Industrial Open Burning" means the open burning of any industrial waste.

(24) "Industrial Waste" means any waste material, including process waste, produced as the direct result of any manufacturing or industrial process.

(25) "Land Clearing" means the removal of trees, brush, logs, stumps, debris or man-made structures for the purpose of site clean-up or site preparation. All waste material generated by land clearing is demolition waste except those materials included in the definitions of agricultural wastes, yard debris (domestic waste), and slash.

(26) "Letter Permit" means an authorization issued pursuant to OAR 340-264-0180 to burn select materials at a defined site and under certain conditions.

(27) "Local Jurisdiction" means:

(a) The local fire permit issuing authority; or

(b) The local governmental entity having authority to regulate by law or ordinance.

(28) "Nuisance" means a substantial and unreasonable interference with another's use and enjoyment of real property, or the substantial and unreasonable invasion of a right common to members of the general public.

(29) "Open Burning" means:

(a) Burning in open, outdoor fires;

(b) Burning in burn barrels;

(c) Burning in incinerators that do not meet the emission limitations specified for solid and infectious waste incinerators in OAR 340-230-0100 through 340-230-0150; and

(d) Any other outdoor burning when combustion air is not effectively controlled and combustion products are not effectively vented through a stack or chimney.

(30) "Open Burning Control Area" means an area established to control specific open burning practices or to maintain specific open burning standards that may be more stringent than those established for other areas of the state. Open burning control areas in the state are described in OAR 340-264-0078.

(31) "Person" means any individual, corporation, association, firm, partnership, joint stock company, public or municipal corporation, political subdivision, the state or any agency thereof, or the federal government or any agency thereof.

(32) "Population" means the annual population estimate of incorporated cities within the State of Oregon issued by the Center for Population Research and Census, Portland State University, Portland, Oregon.

(33) "Slash" means forest debris or woody vegetation to be burned that is related to the management of forest land used for growing and harvesting timber.

(34) "Special Open Burning Control Area" means an area in the Willamette Valley where the Department restricts the practice of open burning. These areas are described in OAR 340-264-0078(6).

(35) "Ventilation Index" means a number calculated by the Department relating to the ability of the atmosphere to disperse pollutants. The ventilation index is the product of the measured or estimated meteorological mixing depth in hundreds of feet and the measured or estimated average wind speed in knots through the mixed layer.

(36) "Waste" includes any useless or discarded materials. Each waste is categorized in this Division as one of the following types:

- (a) Agricultural;
- (b) Commercial;
- (c) Construction;
- (d) Demolition;
- (e) Domestic;
- (f) Industrial; or
- (g) Slash.

(37) "Yard Debris" means wood, needle or leaf materials from trees, shrubs or plants from the real property appurtenant to a dwelling of not more than four family living units so long as such debris remains on the property of origin. Once yard debris is removed from the property of origin, it becomes commercial waste. Yard debris is included in the definition of domestic waste.

*State effective: 12/15/2000; EPA effective: 5/28/2013; 78 FR 24347*

### **340-264-0040 Exemptions, Statewide**

Except for the provisions contained in OAR 340-264-0050 and 340-264-0060, this Division does not apply to:

- (1) Recreational fires and ceremonial fires, for which a fire is appropriate.
- (2) Barbecue equipment used in connection with any residence.
- (3) Fires set or permitted by any public agency when such fire is set or permitted in the performance of its official duty for the purpose of weed abatement, prevention or elimination of a fire hazard, or a hazard to public health or safety, or for instruction of employees in the methods of fire fighting, which in the opinion of the public agency is necessary. Every effort will be made by the public agency to conduct this burning during good smoke dispersal conditions and specifically avoiding periods during Air Pollution Advisories. The agency will adjust its schedule for setting such fires for better smoke dispersal if necessary. Open burning fires otherwise exempt from the requirements of this division are still subject to the requirements and prohibitions of local jurisdictions and the State Fire Marshall.
- (4) Agricultural open burning pursuant to ORS 468A.020. Agricultural open burning is still subject to the requirements and prohibitions of local jurisdictions and the State Fire Marshal.
- (5) Open field burning, propane flaming, and stack and pile burning in the Willamette Valley between the crests of the Cascade and Coast Ranges pursuant to OAR chapter 340, division 266, Rules for Field Burning.
- (6) Slash burning on forest land or within one-eighth mile of forest land permitted under the Oregon Smoke Management Program regulated by the Department of Forestry pursuant to ORS 477.515.

(7) Fires set pursuant to permit for the purpose of instruction of employees of private industrial concerns in methods of fire fighting, or for civil defense instruction.

(8) Fires set for the purpose of disposal of dry tumbleweed plants (typically Russian Thistle and Tumbleweed Mustard plants) that have been broken off, and rolled about, by the wind.

(9) Agricultural burning for disease or pest control when the fire is set or authorized in writing by the Department of Agriculture.

(10) When caused by an authorized representative of the Department of Agriculture, open burning of carcasses of animals that have died or been destroyed because of an animal disease emergency.

**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.

*State effective: 12/11/2012; EPA effective: 8/25/2015; 80 FR 51470*

### **340-264-0050 General Requirements Statewide**

This rule applies to all open burning, unless expressly limited by any other rule, regulation, permit, ordinance, order or decree of the Commission or other agency having jurisdiction:

(1) The following persons are considered a responsible person for open burning in violation of this rule:

(a) Each person who is in ownership, control or custody of the real property on which open burning occurs, including any tenant thereof;

(b) Each person who is in ownership, control or custody of the material that is burned; and

(c) Any person who causes or allows open burning to be initiated or maintained.

(d) For purposes of this rule, a public agency in its official capacity that has issued the permit for burning is not considered a responsible person.

(2) A responsible person, or an expressly authorized agent, must constantly attend all open burning. This person must be capable of and have the necessary equipment for extinguishing the fire. This person also must completely extinguish the fire before leaving it.

(3) A responsible person must promptly extinguish any burning that is in violation of any rule of the Commission or of any permit issued by the Department, unless the Department has given written approval to such responsible person to use auxiliary combustion equipment or combustion promoting materials to minimize smoke production, and the responsible person complies with the requirements in the written approval. However, nothing in this section authorizes any violation of OAR 340-264-0060(2) or (3).

(4) To promote efficient burning and prevent excessive emissions of smoke, a responsible person must:

(a) Assure that all combustible material is dried to the extent practicable. This includes covering the combustible material when practicable to protect the material from moisture in any form, including precipitation or dew. However, nothing in this section authorizes any violation of OAR 340-264-0060(2) or (3);

(b) Loosely stack or windrow the combustible material to eliminate dirt, rocks and other noncombustible material and promote an adequate air supply to the burning pile, and provide the necessary tools and equipment to accomplish this;

(c) Periodically re-stack or feed the burning pile, insure that combustion is essentially completed and smoldering fires are prevented, and provide the necessary tools and equipment to accomplish this.

(5) Notwithstanding OAR 340-264-0040(4), each person sanitizing perennial or annual grass seed crops by open burning in counties outside the Willamette Valley must pay the Department \$4 for each acre burned:

(a) The Department may contract with counties, rural fire protection districts, or other responsible individuals for the collection of the fees;

(b) All fees collected under this section must be deposited in the State Treasury to the credit of the Department of Agriculture Service Fund.

(6) Open burning in compliance with this Division does not exempt any person from any civil or criminal liability for consequences or damages resulting from such burning, nor does it exempt any person from complying with any other applicable law, ordinance, regulation, rule, permit, order, or decree of this or any other governmental entity having jurisdiction.

(7) If any commercial, construction, or demolition debris burning allowed in OAR 340-264-0100 through 340-264-0170 violates OAR 340-264-0060(2), the open burning must be immediately extinguished. Any future burning of this material or similar material by the responsible person is prohibited unless the Department issues a letter permit pursuant to OAR 340-264-0180.

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### **340-264-0060 General Prohibitions Statewide**

This rule applies to all open burning, unless expressly limited by any other rule, regulation, permit, ordinance, or order or decree of the Commission or other agency having jurisdiction:

(1) The following persons are strictly liable for open burning in violation of this rule:

(a) Each person who is in ownership, control or custody of the real property on which open burning occurs, including any tenant thereof;

(b) Each person who is in ownership, control or custody of the material that is burned; and

(c) Any person who causes or allows open burning to be initiated or maintained.

(2) No person may cause or allow to be initiated or maintained any open burning that creates a nuisance or a hazard to public safety.

(3) No person may cause or allow to be initiated or maintained any open burning of any wet garbage, plastic, asbestos, wire insulation, automobile part, asphalt, petroleum product, petroleum treated material, rubber product, animal remains, or animal or vegetable matter resulting from the handling, preparation, cooking, or service of food or of any other material which normally emits dense smoke or noxious odors.

(4) No person may cause or allow to be initiated or maintained any open burning of any material in any part of the state on any day or at any time if the Department has notified the State Fire Marshal that such open burning is prohibited because of meteorological or air quality conditions pursuant to OAR 340-264-0070.

(5) No agency may issue any fire permit authorizing any open burning of any material at any location on any day or at any time if the Department has notified the State Fire Marshal that such open burning is prohibited because of meteorological or air quality conditions. If an agency issues a permit in violation of this rule, the

permit does not excuse any person from complying with this section.

(6) No person may cause or allow to be initiated or maintained any open burning authorized by this Division during hours other than specified by the Department.

(7) No person may cause or allow to be initiated or maintained any open burning at any solid waste disposal site unless authorized by a Solid Waste Permit issued pursuant to OAR 340-093-0050.

(8) No person may cause or allow to be initiated or maintained any open burning of debris removed from the property of origin unless the person receives a letter permit pursuant to OAR 340-264-0180. A letter permit is not required to burn agricultural waste removed from the property of origin provided the waste remains under control of the same responsible person.

*State effective: 12/15/2000; EPA effective: 5/28/2013; 78 FR 24347*

### **340-264-0070 Open Burning Conditions**

Pursuant to ORS 468A.570, 476.380, 477.520 and 478.960, the following open burning conditions apply:

#### (1) Mandatory Prohibition Based on Adverse Air Quality Conditions:

(a) The Department will notify the State Fire Marshal that all open burning is prohibited in all or a specified part of the state when the Department declares:

(A) A particulate or sulfur dioxide alert pursuant to OAR 340-206-0030(2);

(B) A particulate or sulfur dioxide warning pursuant to OAR 340-206-0030(3); or

(C) An emergency for any air contaminant pursuant to OAR 340-206-0030(4).

(b) All open burning is prohibited until the Department notifies the State Fire Marshal that the episode and prohibition are terminated.

#### (2) Discretionary Prohibition or Limitation Based on Meteorological Conditions:

(a) The Department may notify the State Fire Marshal that all or specified types of open burning are prohibited or limited in all or any specified parts of the state based on any one or more of the following criteria affecting that part of the state:

(A) An air stagnation event as determined by the Department;

(B) The daily maximum ventilation index calculated by the Department for Willamette Valley Open Burning Control Areas or Umpqua Basin Open Burning Control Area is less than 200;

(C) The daily maximum ventilation index calculated by the Department for the Rogue Basin Open Burning Control Area is less than 400 for all regulated open burning.

(D) The Department determines there is poor ventilation;

(E) For regulation of burning of yard debris in urban areas, the amount of precipitation expected during the day;  
or

(F) Any other relevant factor.

(b) Such prohibitions or limits remain in effect until the Department notifies the State Fire Marshal that the prohibition or limitation has been terminated;

(c) In deciding whether to prohibit or limit open burning pursuant to this section, the Department will consider:

(A) The policy of the state set forth in ORS 468A.010;

(B) The relevant criteria set forth in ORS 468A.025(2);

(C) The extent and types of materials available to be burned;

(D) In the case of Agricultural open burning, the recommendations received from any local agricultural smoke management organization; and

(E) Any other relevant factor.

(d) In deciding whether to prohibit or limit any open burning pursuant to this section the Department must give first priority to the burning of perennial grass seed crop used for grass seed production, second priority for annual grass seed crop used for grass seed production, third priority to grain crop burning, and fourth priority to all other burning.

(3) Unless prohibited or limited pursuant to section (1) or (2) of this rule, open burning will be allowed only during daylight hours, and must be conducted consistent with the other rules in this Division and the requirements and prohibitions of local jurisdiction and the State Fire Marshal.

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### **340-264-0075 Delegation of Authority**

Whenever the department finds that any city, county, fire protection district, forest protection district or state agency is capable of effectively administering the issuance and/or enforcement of permits under any or all of the open burning authority outlined within this division and is desirous of doing so, the department may delegate powers necessary for the issuance and/or enforcement of open burning permits to that entity. The department, upon finding that the entity is not effectively administering the program, may withdraw such delegation.

*State effective: 12/15/2000; EPA effective: 5/28/2013; 78 FR 24347*

### **340-264-0078 Open Burning Control Areas**

Generally, areas around the more densely populated locations in the state and valleys or basins that restrict atmospheric ventilation are designated "Open Burning Control Areas". The practice of open burning may be more restrictive in open burning control areas than in

other areas of the state. The specific open burning restrictions associated with these open burning control areas are listed in OAR 340- 264-0100 through 340-264-0170 by county. The general locations of open burning control areas are depicted in **Figures 2** through **5**. The open burning control areas of the state are defined as follows:

(1) All areas in or within three miles of the incorporated city limit of all cities with a population of 4,000 or more.

(2) The Coos Bay Open Burning Control Area is located in Coos County with boundaries as generally depicted in **Figure 3** of this rule. The area is enclosed by a line beginning at a point approximately 4-1/2 miles WNW of the City of North Bend, at the intersection of the north boundary of T25S, R13W, and the coastline of the Pacific Ocean; thence east to the NE corner of T25S, R12W; thence south to the SE corner of T26S, R12W; thence west to the intersection of the south boundary of T26S, R14W and the coastline of the Pacific Ocean, thence northerly and easterly along the coastline of the Pacific Ocean to its intersection with the north boundary of T25S, R13W, the point of beginning.

(3) The Rogue Basin Open Burning Control Area is located in Jackson and Josephine Counties with boundaries as generally depicted in Figure 4. The area is enclosed by a line beginning at a point approximately 4-1/2 miles NE of the City of Shady Cove at the NE corner of T34S, R1W, Willamette Meridian, thence south along the Willamette Meridian to the SW corner of T37S, R1W; thence east to the NE corner of T38S, R1E; thence south to the SE corner of T38S, R1E; thence east to the NE corner of T39S, R2E; thence south to the SE corner of T39S, R2E; thence west to the SW corner of T39S, R1E; thence NW along a line to the NW corner of T39S, R1W; thence west to the SW corner of T38S, R2W; thence north to the SW corner of T36S, R2W; thence west to the SW corner of T36S, R4W; thence south to the SE corner of T37S, R5W; thence west to the SW corner of T37S, R6W; thence north to the NW corner of T36S, R6W; thence east to the SW corner of T35S, R1W; thence north to the NW corner of T34S, R1W; thence east to the point of beginning.

(4) The Umpqua Basin Open Burning Control Area is located in Douglas County with boundaries as generally depicted in **Figure 5**. The area is enclosed by a line beginning at a point approximately four miles ENE of the City of Oakland, Douglas County, at the NE corner of T25S, R5W, Willamette Meridian, thence south to the SE corner of T25S, R5W; thence east to the NE Corner of T26S, R4W; thence south to the SE corner of T27S, R4W; thence west to the SE corner of T27S, R5W; thence south to the SE corner of T30S, R5W; thence west to the SW corner of T30S, R6W; thence north to the NW corner of T29S, R6W; thence west to the SW corner of T28S, R7W thence north to the NW corner of T27S, R7W; thence east to the NE corner of T27S, R7W; thence north to the NW corner of T26, R6W; thence east to the NE corner of T26S, R6W; thence north to the NW corner of T25S, R5W; thence east to the point of beginning.

(5) The boundaries of the Willamette Valley Open Burning Control Area are generally depicted in Figures 1 and 2. The area includes all of Benton, Clackamas, Linn, Marion, Multnomah, Polk, Washington and Yamhill Counties and that portion of Lane County east of Range 7 West.

(6) The Klamath Basin Open Burning Control Area is located in Klamath County with boundaries generally depicted in Figure 6. The area is enclosed by a line beginning at the corner common to northwest corner of Section 31, Township 37 South, Range 9 East of the Willamette Meridian and southwest corner of Section 30 T37S, R9E W.M.; thence east approximately two miles to the northeast corner of Section 32; thence south approximately four miles to the southeast corner of Section 17, T38S, R9E W.M.; thence east approximately one mile to the southwest corner of Section 15,; thence north approximately one mile to the northwest corner of Section 15; thence east approximately 2 miles to the northeast corner of Section 14; thence south approximately one mile to the northwest corner of section 24; thence east approximately one mile to the northeast corner of Section 24; thence south approximately three miles to the southeast corner of Section 36; thence east approximately four miles to the northeast corner of Section 3, T39S, R10E W.M.; thence south approximately three miles to the southeast corner of Section 15; thence west approximately two miles to the southwest corner of Section 16; thence south approximately two miles to the southeast corner of Section 29;

thence west approximately five miles to the southwest corner of Section 27, T39S, R9E; thence north approximately one mile to the northeast corner of Section 27; thence west approximately four miles to the southwest corner of Section 24, T39S R8E; thence north approximately two miles to the northeast corner of Section 13; thence west approximately one mile to the southwest corner of Section 11; thence north approximately four miles to the northwest corner of Section 26 T38S, R8E; thence west one mile to the southwest corner of Section 22; thence north approximately one mile to the northwest corner of Section 22; thence west approximately one mile to the southwest corner of Section 16; thence north approximately one mile to the northeast corner of Section 16; thence west approximately one mile to the southwest corner of Section 8; thence north approximately two miles to the northwest corner of Section 5; thence east to the northeast corner of Section 1; thence north approximately one mile to the point of beginning.

(7) "Special Open Burning Control Areas" are established around cities within the Willamette Valley Open Burning Control Area. The boundaries of these special open burning control areas are determined as follows:

(a) Any area in or within three miles of the boundary of any city of more than 1,000 but less than 45,000 population;

(b) Any area in or within six miles of the boundary of any city of 45,000 or more population;

(c) Any area between areas established by this rule where the boundaries are separated by three miles or less;

(d) Whenever two or more cities have a common boundary, the total population of these cities will determine the applicability of subsection (a) or (b) of this section and the municipal boundaries of each of the cities must be used to determine the limit of the special open burning control area.

(8) A domestic burning ban area around the Portland metropolitan area is generally depicted in **Figure 1A**. This area encompasses parts of the special control area in Clackamas, Multnomah and Washington Counties. Specific boundaries are listed in OAR 340-264-0120(5), 340-264-0130(5) and 340-264-0140(5). Domestic burning is prohibited in this area except as allowed pursuant to OAR 340-264-0180.

[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.]

*State effective: 12/11/2012; EPA Effective: 8/25/2015; 80 FR 51470*

### **340-264-0080 County Listing of Specific Open Burning Rules**

Except as otherwise provided, in addition to the general requirements and prohibitions listed in OAR 340-264-0050 and 340-264-0060, specific prohibitions of Agricultural, Commercial, Construction, Demolition, Domestic, and Industrial open burning are listed in separate rules for each county. The following list identifies the rule containing prohibitions of specific types of open burning applicable to a given county:

(1) Baker County -- OAR 340-264-0100.

(2) Benton County -- OAR 340-264-0110.

(3) Clackamas County -- OAR 340-264-0120.

(4) Clatsop County -- OAR 340-264-0100.

(5) Columbia County -- OAR 340-

264-0150. (6) Coos County -- OAR

340-264-0170.

- (7) Crook County -- OAR 340-264-0100.
- (8) Curry County -- OAR 340-264-0100.
- (9) Deschutes County -- OAR 340-264-0100.
- (10) Douglas County -- OAR 340-264-0170.
- (11) Gilliam County -- OAR 340-264-0100.
- (12) Grant County -- OAR 340-264-0100.
- (13) Harney County -- OAR 340-264-0100.
- (14) Hood River County -- OAR 340-264-0100.
- (15) Jackson County -- OAR 340-264-0170.
- (16) Jefferson County -- OAR 340-264-0100.
- (17) Josephine County -- OAR 340-264-0170.
- (18) Klamath County -- OAR 340-264-0175.
- (19) Lake County -- OAR 340-264-0100.
- (20) Lane County -- OAR 340-264-0160.
- (21) Lincoln County -- OAR 340-264-0100.
- (22) Linn County -- OAR 340-264-0110.
- (23) Malheur County -- OAR 340-264-0100.
- (24) Marion County -- OAR 340-264-0110.
- (25) Morrow County -- OAR 340-264-0100.
- (26) Multnomah County -- OAR 340-264-0130.
- (27) Polk County -- OAR 340-264-0110.
- (28) Sherman County -- OAR 340-264-0100.
- (29) Tillamook County -- OAR 340-264-0100.
- (30) Umatilla County -- OAR 340-264-0100.
- (31) Union County -- OAR 340-264-0100.
- (32) Wallowa County -- OAR 340-264-0100.

- (33) Wasco County -- OAR 340-264-0100.
- (34) Washington County -- OAR 340-264-0140.
- (35) Wheeler County-- OAR 340-264-0100.
- (36) Yamhill County -- OAR 340-264-0110.

[**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.]

*State effective: 12/11/2012; EPA Effective: 8/25/2015; 80 FR 51470*

## OPEN BURNING REQUIREMENTS

### **340-264-0100 Baker, Clatsop, Crook, Curry, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lincoln, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco and Wheeler Counties**

Open burning requirements for the counties of Baker, Clatsop, Crook, Curry, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lincoln, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco and Wheeler:

- (1) Industrial open burning is prohibited, except as provided in OAR 340-264-0180.
- (2) Agricultural open burning is allowed subject to OAR 340-264-0050(5) and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.
- (3) Commercial open burning:
  - (a) Commercial open burning is prohibited within Lincoln County except as provided in OAR 340-264-0180.
  - (b) Commercial open burning is allowed outside of open burning control areas subject to OAR 340-264-0050, 340-264-0060 and 340- 264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal. Commercial open burning, unless authorized pursuant to 340-264-0180, is prohibited within three miles of the corporate city limits of the following open burning control areas. In addition, commercial open burning is prohibited in any area meeting the test in 340-264-0078(1):
    - (c) In Baker County, the City of Baker City;
    - (d) In Clatsop County, the Cities of Astoria, Seaside and Warrenton;
    - (e) In Crook County, the City of Prineville;

- (f) In Curry County, the City of Brookings;
- (g) In Deschutes County, the Cities of Bend and Redmond;
- (h) In Hood River County, the City of Hood River;
- (i) In Jefferson County, the City of Madras;
- (j) In Malheur County, the City of Ontario;
- (k) In Tillamook County, the City of Tillamook;
- (l) In Umatilla County, the Cities of Hermiston, Milton-Freewater and Pendleton;
- (m) In Union County, the City of La Grande;
- (n) In Wasco County, the City of The Dalles.

(4) Construction and Demolition open burning outside of an open burning control area is allowed subject to the requirements and prohibitions of local jurisdictions, the State Fire Marshal, OAR 340-264-0050, 340-264-0060, and 340-264-0070. Construction and Demolition open burning, unless authorized pursuant to OAR 340-264-0180, is prohibited within three miles of the corporate city limits of the following open burning control areas. In addition, construction and demolition burning is prohibited in any area meeting the standard in OAR 340-264-0078(1):

- (a) In Baker County, the City of Baker City;
- (b) In Clatsop County, the Cities of Astoria, Seaside and Warrenton;
- (c) In Crook County, the City of Prineville;
- (d) In Curry County, the City of Brookings;
- (e) In Deschutes County, the Cities of Bend and Redmond;
- (f) In Hood River County, the City of Hood River;
- (g) In Jefferson County, the City of Madras;
- (h) In Lincoln County, the Cities of Lincoln City and Newport;
- (i) In Malheur County, the City of Ontario;
- (j) In Tillamook County, the City of Tillamook;
- (k) In Umatilla County, the Cities of Hermiston, Milton-Freewater and Pendleton;
- (l) In Union County, the City of La Grande;
- (m) In Wasco County, the City of The Dalles.

(5) Domestic open burning is allowed subject to the requirements and prohibitions of local jurisdictions, the State Fire Marshal, and OAR 340-264-0050, 340-264-0060 and 340-264-0070.

(6) Slash burning on forest land within open burning control areas not regulated by the Department of Forestry under the Smoke Management Plan is prohibited, except as provided in OAR 340-264-0180.

[**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.]

*State effective: 12/11/2012; EPA Effective: 8/25/2015; 80 FR 51470*

**340-264-0110 Benton, Linn, Marion, Polk, and Yamhill Counties**

Open burning requirements for Benton, Linn, Marion, Polk, and Yamhill Counties that form a part of the Willamette Valley Open Burning Control Area described in OAR 340-264-0078:

(1) Industrial open burning is prohibited, except as provided in OAR 340-264-0180.

(2) Agricultural open burning is allowed, subject to the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(3) Commercial open burning is prohibited, except as provided in OAR 340-264-0180.

(4) Construction and Demolition open burning is allowed outside of special open burning control areas, subject to the requirements and prohibitions of local jurisdictions, the State Fire Marshal, OAR 340-264-0050, 340-264-0060 and 340-264-0070. Unless authorized pursuant to OAR 340-264-0180, Construction and Demolition open burning is prohibited within special open burning control areas, including the following:

(a) Areas in or within six miles of the corporate city limit of:

(A) In Benton County, the City of Corvallis;

(B) In Marion County, the Cities of Salem and Keizer;

(C) In Polk County, the City of Salem.

(b) Areas in or within three miles of the corporate city limit of:

(A) In Benton County, the Cities of Albany, and Philomath;

(B) In Linn County, the Cities of Albany, Brownsville, Harrisburg, Lebanon, Lyons, Mill City, Tangent and Sweet Home;

(C) In Marion County the Cities of Aumsville, Gervais, Hubbard, Jefferson, Mill City, Mt. Angel, Silverton, Stayton, Sublimity, Turner and Woodburn;

(D) In Polk County, the Cities of Dallas, Falls City, Independence, Monmouth and Willamina;

(E) In Yamhill County, the Cities of Amity, Carlton, Dayton, Dundee, Lafayette, McMinnville, Newberg, Sheridan and Willamina.

(c) Any areas that meet the test in OAR 340-264-0078(6).

(5) Domestic open burning:

(a) As generally depicted in Figure 1 of OAR 340-264-0078, domestic open burning is prohibited in the special open burning control areas named in section (4) of this rule, except open burning of yard debris is allowed beginning March first and ending June 15th, inclusive, and beginning October 1st and ending December 15th, inclusive, subject to OAR 340-264-0050 and 340-264-0060 and the requirements and prohibitions of local jurisdictions and the State Fire Marshal;

(b) Domestic open burning is allowed outside of special open burning control areas named in section (4) of this rule, subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal;

(c) No person may cause or allow to be initiated or maintained any domestic open burning other than during daylight hours, unless otherwise specified by the Department pursuant to OAR 340-264-0070.

(6) Slash burning on forest land within special open burning control areas not regulated by the Department of Forestry under the Smoke Management Program is prohibited, except as provided in OAR 340-264-0180.

*State effective: 12/15/2000; EPA effective: 5/28/2013; 78 FR 24347*

**340-264-0120 Clackamas County**

Open burning requirements for Clackamas County:

(1) Industrial open burning is prohibited, except as provided in OAR 340-264-0180.

(2) Agricultural open burning is allowed, subject to the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(3) Commercial open burning is prohibited, except as may be provided by OAR 340-264-0180.

(4) Construction and Demolition open burning is allowed outside of special open burning control areas, subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal. Unless authorized pursuant to OAR 340-264-0180, Construction and Demolition open burning is prohibited within the following:

(a) Areas in or within six miles of the corporate city limits of Gladstone, Gresham, Happy Valley, Lake Oswego, Milwaukie, Oregon City, Portland, Rivergrove, Tualatin, West Linn and Wilsonville;

(b) Areas in or within three miles of the corporate city limits of Canby, Estacada, Molalla and Sandy.

(c) Any areas that meet the test in OAR 340-264-0078(6).

(5) Domestic open burning:

(a) Those areas where domestic burning is always prohibited (unless authorized under 340-264-0180): Beginning at the trisection of the Clackamas-Multnomah-Washington County Line; thence east and then northerly and then east following the Clackamas-Multnomah County Line to the intersection with the northwest corner of Section 27, T1S, R2E; thence south to the midpoint of the western boundary of Section 3, T2S, R2E; thence on a line east approximately 1/4 of a mile; thence south to the southern boundary of Section 3, T2S, R2E and the corner of Camp Withycombe (Oregon National Guard); thence west approximately 1/4 mile to the mid- point of the southern boundary of Section 3, T2S, R2E; thence on a line south to the Clackamas River and the Metro Boundary as defined in Oregon Revised Statutes (ORS) Chapter 268.125; thence following the Metro Boundary first southerly and then westerly to the intersection with the Willamette River, excepting that portion listed in subsection (b)(2); thence northeasterly along the Willamette River to the confluence with the Tualatin River; thence northwesterly along the Tualatin River to the intersection with U.S. Interstate Highway 205 (I-205); thence westerly along I-205 to the intersection with the Clackamas-Washington County Line; thence north along the Clackamas-Washington County Line to the trisection of the Clackamas-Multnomah-Washington County Line, the point of beginning.

(b) Those areas where domestic open burning is prohibited except for the burning of yard debris between March 1 and June 15, and between October 1 and December 15, subject to OAR 340-264-0050 through 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshall, are the areas that lie within both Clackamas County and the Metro Boundary and are not included in paragraph (a) of this section. Specifically, those areas are listed as follows:

(A) The area beginning at the point on the Clackamas-Washington County Line where it is intersected by I-205; thence easterly along I-205 to the intersection with the Tualatin River; thence southeasterly along the Tualatin River to the confluence with the Willamette River; thence southerly along the Willamette River to the intersection with the northern boundary of Section 15, T3S, R1E; thence west to the northwest corner of Section 15, T3S, R1E; thence north to the northwest corner of section 10, T3S, R1E; thence west to the northwest corner of Section 9, T3S, R1E; thence north to the northwest corner of Section 4, T3S, R1E; thence west to the intersection with the Clackamas-Washington County Line; thence north to the intersection with I-205, the point of beginning.

(B) The area bounded by Henrici Road on the south; Highway 213 on the west; Beaver Creek Road on the east; and the southern boundary of Clackamas Community College on the north.

(C) The area beginning at the point where the Clackamas-Multnomah County Line intersects the northwest corner of Section 27, T1S, R2E; thence south to the midpoint of the western boundary of Section 3, T2S, R2E; thence on a line east approximately 1/4 of a mile; thence

south to the southern boundary of Section 3, T2S, R2E and the corner of Camp Withycombe; thence west 1/4 mile to the midpoint of the southern boundary of Section 3, T2S, R2E; thence on a line south to the Clackamas River; thence easterly along the Clackamas River to the intersection with the western boundary of Section 18, T2S, R3E; thence north to the northwest corner of Section 18, T2S, R3E; thence east to the northwest corner of Section 14, T2S, R3E; thence north to the northwest corner of Section 11, T2S, R3E; thence east to the intersection with Epperson Road; thence north-north westerly along Epperson Road to the intersection with the Clackamas-Multnomah County Line at the northern boundary of Section 29, T1S, R2E; thence west along the county line to the northwest corner of Section 27, T1S, R2E, the point of beginning.

(c) Domestic open burning is allowed in all other areas of Clackamas County, subject to OAR 340-264-0050 and 340-264-0060 and the requirements and prohibitions of local jurisdictions and the State Fire Marshal;

(d) No person may cause or allow to be initiated or maintained any domestic open burning other than during daylight hours unless specified by the Department pursuant to OAR 340-264-0070.

(6) Slash burning on forest land within special open burning control areas not regulated by the Department of Forestry under the Smoke Management Program is prohibited, except as provided in OAR 340-264-0180.

*State effective: 12/15/2000; EPA effective: 5/28/2013; 78 FR 24347*

### **340-264-0130 Multnomah County**

Open burning requirements for Multnomah County:

(1) Industrial open burning is prohibited, except as provided in OAR 340-264-0180.

(2) Agricultural open burning is allowed, subject to the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(3) Commercial open burning is prohibited, except as provided in OAR 340-264-0180.

(4) Construction and Demolition open burning, unless authorized pursuant to OAR 340-264-0180, is prohibited west of the Sandy River but is allowed east of the Sandy River, subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(5) Domestic open burning:

(a) Those areas where open burning is always prohibited (unless authorized by 340-264-0180):

(A) The area encompassed by the line beginning at the point where the Multnomah,

Clackamas, and Washington County lines meet at a trisection; thence east and then north and then east along the Multnomah-Clackamas County Line to the intersection with SE 172nd Avenue; thence north along SE 172nd Avenue to the intersection with SE Foster Road; thence southeasterly along SE Foster Road to the intersection with Jenne Road; thence northeasterly along Jenne Road to the intersection with SE 174th Avenue; thence north along SE 174th Avenue to the intersection with SE Marie Street; thence east along SE Marie Street to the intersection with SE 182nd Avenue; thence north along SE 182nd Avenue and continuing north as SE 182nd Avenue merges into SE 181st Avenue and then turns into NE 181st Avenue to the intersection with NE Sandy Boulevard; thence easterly along NE Sandy Boulevard to the intersection with NE 185th Drive; thence north along NE 185th Drive to the intersection with Marine Drive; thence continuing on a line due north to the Columbia River and the state line; thence following the Columbia River and the state line; thence following the Columbia River and the state line to the confluence of the Columbia and the Willamette Rivers; thence along the Willamette River to the Confluence with the Multnomah Channel and the Portland City Limits; thence following the Portland City Limits generally southerly to the intersection with Section 27, T1N, R1W and the Multnomah-Washington County Line; thence following the Multnomah-Washington County Line southwesterly and then south to the trisection of the Multnomah-Clackamas-Washington County Line, the point of beginning.

(B) All areas in northwest Multnomah County that are not contained within a Fire Protection District.

(C) The Burlington Water District.

(b) Those areas where domestic open burning is prohibited, except for the burning of yard debris between March 1 and June 15, and between October 1 and December 15 and subject to OAR 340-264-0050 through 340-264-0070 and the requirements and prohibitions of local jurisdictions and the State Fire Marshall, are the areas within Multnomah County that lie west of the Sandy River and are not included in OAR 340-264-0130(5)(a).

(c) Domestic open burning is allowed east of the Sandy River, subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal;

(d) No person may cause or allow to be initiated or maintained any domestic open burning other than during daylight hours unless otherwise specified by Department pursuant to OAR 340-264-0070.

(6) Slash burning on forest land within special open burning control areas not regulated by the Department of Forestry under the Smoke Management Program is prohibited, except as provided in OAR 340-264-0180.

*State effective: 12/15/2000; EPA effective: 5/28/2013; 78 FR 24347*

### **340-264-0140 Washington County**

Open burning requirements for Washington County:

- (1) Industrial open burning is prohibited, except as provided in OAR 340-264-0180.
- (2) Agricultural open burning is allowed, subject to the requirements and prohibitions of local jurisdictions and the State Fire Marshal.
- (3) Commercial open burning is prohibited, except as may be provided by OAR 340-264-0180.
- (4) Construction and Demolition open burning, unless authorized pursuant to OAR 340-264-0180, is prohibited in all incorporated areas and areas within rural fire protection districts. Construction and demolition open burning is allowed in all other areas subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.
- (5) Domestic open burning:
  - (a) The area where open burning is always prohibited (unless authorized by 340-264-0180): Beginning at the point where U.S. Interstate Highway 205 (I-205) intersects the Washington-Clackamas County Line; thence west along I-205 to the Tualatin City Limits; thence following along the Tualatin City Limits westerly, southerly, westerly and northerly to the intersection with U.S. Highway 99; thence northerly along U.S. Highway 99 to the intersection with the Metro Boundary as defined in Oregon Revised Statutes (ORS) Chapter 268.125; thence following the Metro Boundary generally northerly and westerly to the intersection with the Tualatin Valley Highway; thence westerly along the Tualatin Valley Highway to the intersection with the western boundary of Section 11, T1S, R2W; thence north to the northwest corner of Section 2, T1S, R2W; thence east to the northwest corner of Section 2, T1S, R2W; thence north to the intersection with U.S. Highway 26; thence northwesterly along U.S. Highway 26 to the intersection with Cornelius Pass Road; thence northeasterly along Cornelius Pass Road to the intersection with the northern boundary of Section 23, T1N, R2W; thence east approximately 1/5 mile along the northern boundary of section 23, T1N, R2W to the southernmost point of the Orchard; thence north following the eastern boundary of the Orchard to the intersection with West Union Road; thence southeasterly and then easterly along West Union Road approximately 1.1 miles to a point approximately 1/4 mile west of the eastern boundary of Section 24, T1N, R2W; thence north on a line approximately 1000 feet; thence northeasterly on a line approximately 1/4 mile to the intersection of NW 185th Avenue and NW Springville Road; thence northeasterly along NW Springville Road approximately 1/4 mile to the one-quarter point of the northern boundary of Section 19, T1N, R1W; thence north approximately 400 feet; thence east to the intersection with NW 185th Avenue; thence north along 185th Avenue approximately 800 feet to the one-quarter point of the western boundary of Section 18, T1N, R1W; thence gradually northeasterly such that the Rock Creek Campus of Portland Community College is within the boundary approximately 1/2 mile to the midpoint of Section 18, T1N, R1W; thence south following the eastern boundary of the

Rock Creek Campus of Portland Community College and continuing on a line due south to the intersection with NW Springville Road and the southern boundary of Section 18, T1N,R1W; thence northeasterly along NW Springville Road to the intersection with the Washington-Multnomah County Line; thence following the Washington County line southeasterly and then southerly to the point where the Washington-Clackamas County Line intersects I-205, the point of beginning.

(b) Those areas where domestic open burning is prohibited, except for the burning of yard debris between March 1 and June 15, and between October 1 and December 15, subject to OAR 340-264-0050 through 340-262-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshall:

(A) All incorporated areas in Washington County not listed in OAR 340-264-0140(5)(a) or 340-264-0140(5)(c).

(B) All unincorporated areas within municipal or rural fire districts.

(c) Those areas where domestic burning is allowed, subject to OAR 340-264-0050, and 340-264-0060 and the requirements and prohibitions of local jurisdictions and the State Fire Marshall:

(A) The area enclosed by a line beginning at the point where Highway 26 intersects the western boundary of Section 24, T2N, R4W; thence north to the northwest corner of Section 13, T2N, R4W; thence east to the midpoint of the northern boundary of Section 16, T2N, R3W; thence on a line south to the middle of Section 21, T2N, R3W; thence east to the intersection with the midpoint of the western boundary of Section 22, T2N, R3W; thence south to the southwest corner of Section 22, T2N, R3W; thence continuing south to the northern boundary of Washington County Donation Land Claim (DLC) #44; thence southeast and east following the northern boundary of Washington County DLC #44 to the eastern boundary of Washington County DLC #44; thence southwesterly along the eastern boundary of DLC #44 to the intersection with DLC Plot #76; thence continuing southwesterly along the eastern boundary of DLC #76 to the intersection with the Burlington Northern Railroad Line; thence northwesterly along the Burlington Northern Railroad Line to the intersection with the southern boundary of Section 32, T2N, R4W; thence west to the southwest corner of Section 36, T2N, R4W; thence north to the point where Highway 26 intersects the western boundary of Section 24, T2N, R4W, the point of beginning.

(B) All unincorporated areas of Washington County outside of municipal or rural fire districts.

(d) No person may cause or allow to be initiated or maintained any domestic open burning other than during daylight hours between 7:30a.m. and two hours before sunset unless otherwise specified by Department pursuant to OAR 340-264-0070.

(6) Slash burning on forest land within special open burning control areas not regulated by the Department of Forestry under the Smoke Management Program is prohibited, except as provided in OAR 340-264-0180.

*State effective: 12/15/2000; EPA effective: 5/28/2013; 78 FR 24347*

### **340-264-0150 Columbia County**

Open burning requirements for Columbia County:

(1) Industrial open burning is prohibited unless authorized pursuant to OAR 340-264-0180.

(2) Agricultural open burning is allowed subject to OAR 340-264-0050(5) and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(3) Commercial open burning is prohibited unless authorized pursuant to OAR 340-264-0180.

(4) Construction and demolition open burning:

(a) Unless authorized pursuant to OAR 340-264-0180, Construction and Demolition open burning is prohibited within three miles of the open burning control areas of Clatskanie, Rainier, St. Helens, Scappoose, and Vernonia and any other area that meets the standard in OAR 340-264-0078(1);

(b) Construction and Demolition open burning is allowed in all other parts of Columbia County subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(5) Domestic open burning is allowed subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(6) Slash burning on forest land within open burning control areas not regulated by the Department of Forestry under the Smoke Management Program is prohibited, except as provided in OAR 340-264-0180.

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### **340-264-0160 Lane County**

Open burning requirements for Lane County. That portion of Lane County east of Range 7 West, Willamette Meridian, forms a part of the Willamette Valley Open Burning Control Area as generally described in OAR 340-264-0078(5) and depicted in Figure 2:

(1) The rules and regulations of the Lane Regional Air Pollution authority apply to all open burning in Lane County, provided such rules are no less stringent than the provisions of this

Division. The Lane Regional Air Pollution Authority may not regulate agricultural open burning.

(2) Industrial open burning is prohibited unless authorized pursuant to OAR 340-264-0180.

(3) Agricultural open burning is allowed subject to the requirements and prohibitions of local jurisdictions and the State Fire Marshal:

(4) Commercial open burning, unless authorized pursuant to OAR 340-264-0180, is prohibited in Lane County east of Range 7 West Willamette Meridian and in or within three miles of the city limit of Florence on the coast. Commercial open burning is allowed in the remaining areas of Lane County, subject to OAR 340-264-0050 and 340-264-0060 and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(5) Construction and Demolition open burning, unless authorized pursuant to OAR 340-264-0180, is prohibited within all fire districts and other areas specified in this section but is allowed elsewhere in Lane County, subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal. Areas where open burning of construction and demolition waste is prohibited include:

- (a) Bailey-Spencer RFPD;
- (b) Coburg RFPD;
- (c) Cottage Grove/South Lane Fire District;
- (d) Creswell RFPD;
- (e) Dexter RFPD except that portion east of the Willamette Meridian;
- (f) Eugene RFPD No.1;
- (g) Goshen RFPD;
- (h) Junction City Fire District;
- (i) Junction City RFPD;
- (j) Lane County Fire District #1;
- (k) Lane RFPD No.1 outside the Eugene-Springfield Urban Growth Boundary;
- (l) Lowell RFPD;
- (m) Marcola RFPD;
- (n) McKenzie RFPD outside the Eugene-Springfield Urban Growth Boundary;
- (o) Monroe RFPD that portion within Lane County;
- (p) Oakridge RFPD;
- (q) Pleasant Hill RFPD;
- (r) Santa Clara RFPD outside the Eugene-Springfield Urban Growth Boundary;
- (s) Westfir RFPD;
- (t) Willakenzie RFPD;
- (u) Zumwalt RFPD.

(6) Domestic open burning:

(a) Domestic open burning outside the fire districts listed in section (5) of this rule is allowed subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal;

(b) Domestic open burning is prohibited within all fire districts listed in section (5) of this rule except that open burning of yard debris is allowed subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal;

(c) Refer to Lane Regional Air Pollution Authority open burning rules for specific seasons and hours for domestic open burning.

(7) Slash burning on forest land within special open burning control areas not regulated by the Department of Forestry under the Smoke Management Program is prohibited, except as provided in OAR 340-264-0180.

*State effective: 12/15/2000; EPA effective: 5/28/2013; 78 FR 24347*

### **340-264-0170 Coos, Douglas, Jackson and Josephine Counties**

Open burning requirements for Coos, Douglas, Jackson and Josephine Counties:

(1) Open burning control areas:

(a) The Coos Bay open burning control area as generally described in OAR 340-264-0078(2) and depicted in Figure 3 is located in Coos County;

(b) The Umpqua Basin open burning control area as generally described in OAR 340-264-0078(4), and depicted in Figure 5, is located in Douglas County;

(c) The Rogue Basin open burning control area as generally described in OAR 340-264-0078(3) and depicted in Figure 4, is located in Jackson and Josephine Counties.

(2) Industrial open burning is prohibited unless authorized pursuant to OAR 340-264-0180.

(3) Agricultural open burning is allowed subject to OAR 340-264-0050(5) and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(4) Commercial open burning is prohibited within the Coos Bay, Umpqua Basin and Rogue Basin open burning control areas and within three miles of the corporate city limits of Coquille, Reedsport and other areas that meet the standard in OAR 340-264-0078(1), unless authorized pursuant to OAR 340-264-0180. Commercial open burning is allowed in all other areas of these counties subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070 and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(5) Construction and Demolition open burning is prohibited within the Coos Bay, Umpqua Basin and Rogue Basin open burning control areas and within three miles of the corporate city limits of Coquille, Reedsport and other areas that meet the standard within OAR 340-264-0078(1), unless authorized pursuant to OAR 340-264-0180. Construction and Demolition open burning is allowed in other areas of these counties subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(6) Domestic open burning is allowed subject to OAR 340-264-0050, 340-264-0060, 340-264-0070 and section (7) of this rule, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(7) Slash burning on forest land within open burning control areas not regulated by the Department of Forestry under the Smoke Management Program is prohibited, except as provided in OAR 340-264-0180.

*State effective: 12/15/2000; EPA effective: 5/28/2013; 78 FR 24347*

### **340-264-0175 Klamath County**

Open burning requirements for Klamath County:

(1) Open burning control areas:

(a) The Klamath Basin open burning control area as generally described in OAR 340-264-0078(6) and depicted in **Figure 6** is located in Klamath County;

(2) Industrial open burning is prohibited unless authorized pursuant to OAR 340-264-0180.

(3) Agricultural open burning is allowed subject to OAR 340-264-0050(5) and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(4) Commercial open burning is prohibited within the Klamath Basin open burning control areas and within three miles of the corporate city limits of other areas that meet the standard in OAR 340-264-0078(1), unless authorized pursuant to 340-264-0180. Commercial open burning is allowed in all other areas of this county subject to 340-264-0050, 340-264-0060 and 340-264-0070 and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(5) Construction and Demolition open burning is prohibited within the Klamath Basin open burning control areas and within three miles of the corporate city limits of other areas that meet the standard within OAR 340-264-0078(1), unless authorized pursuant to 340-264-0180. Construction and Demolition open burning is allowed in other areas of these counties subject to 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(6) Domestic open burning is allowed subject to OAR 340-264-0050, 340-264-0060, 340-264-0070 and section (7) of this rule, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal.

(7) Slash burning on forest land within open burning control areas not regulated by the Department of Forestry under the Smoke Management Program is prohibited, except as provided in OAR 340-264-0180.

*State effective: 12/11/2012; EPA Effective: 8/25/2015; 80 FR 51470*

### **340-264-0180 Letter Permits**

(1) Open Burning of commercial, industrial, slash, construction or demolition waste on a singly occurring or infrequent basis or the open burning of yard debris that is otherwise prohibited, may be permitted by a letter permit issued by the Department in accordance with this rule and subject to OAR 340-264-0050, 340-264-0060 and 340-264-0070, and the requirements and prohibitions of local jurisdictions and the State Fire Marshal. OAR 340-014-0025 and division 216 do not apply.

(2) A letter permit may only be issued on the basis of a written application for disposal of material by burning that has been approved by the Department. Each application for a letter permit must contain the following items:

- (a) The quantity and type of material proposed to be burned;
- (b) A listing of all alternative disposal methods and potential costs that have been identified or investigated;
- (c) The expected amount of time that will be required to complete the burning (not required for yard debris);
- (d) The methods proposed to be used to insure complete and efficient combustion of the material;
- (e) The location of the proposed burning site;
- (f) A diagram showing the proposed burning site and the structures and facilities inhabited or used in the vicinity including distances thereto;
- (g) The expected frequency of the need to dispose of similar materials by burning in the future;
- (h) If the application is for prescribed burning of standing vegetation for the purpose of creating or restoring wetlands or for promoting or enhancing habitat for indigenous species of plants or animals, the application must also include a citation to the federal or state law or program requiring or authorizing such conversion or enhancement. The application must also include a

statement from the appropriate agency responsible for implementing the law or program that open burning is the most practicable alternative for the conversion or enhancement.

(i) Any other information that the applicant considers relevant or the Department may require;

(j) For open burning of yard debris:

(A) A "Hardship Permit Application" completed on a form supplied by the Department; and

(B) Either payment of the appropriate fee pursuant to section (10) of this rule or a "waiver request" completed on a form supplied by the Department.

(3) Upon receipt of a written application, the Department may approve the application if it is satisfied that:

(a) The applicant has demonstrated that all reasonable alternatives have been explored and no practicable alternative method for disposal of the materials exists; and

(b) The proposed burning will not cause or contribute to significant degradation of air quality.

(c) For locations within Clackamas, Columbia, Multnomah and Washington counties, where open burning is otherwise prohibited, the following conditions must also be met. Letter permits may be issued only for disposing of:

(A) Material resulting from emergency occurrences, including but not limited to floods, storms or oil spills;

(B) Material originating as yard debris that has been collected and stored by governmental jurisdictions, provided that no other reasonable means of disposal are available;

(C) Yard debris excluding grass clippings and leaf piles, on the property of a private residence where the inability to burn creates a significant hardship due to:

(i) An economic burden because the estimated cost of alternative means of yard debris disposal presents a financial hardship in relation to household income and expenses of the applicant;

(ii) A physical handicap, personal disability, chronic illness, substantial infirmity or other physical limitation substantially inhibiting the ability of the applicant to process or transport yard debris; or

(iii) Inaccessibility of yard debris, where steepness of terrain or remoteness of the debris site makes access by processing or transportation equipment unreasonable.

(4) The Department may deny an application for a letter permit or revoke or suspend an issued

letter permit on any of the following grounds:

(a) Any material misstatement or omission in the application or a history of such misstatements or omissions by the applicant;

(b) Any actual or projected violation of any statute, rule, regulation, order, permit, ordinance, judgment or decree.

(5) In making its determination under section (3) of this rule, the Department may consider:

(a) The conditions of the airshed of the proposed burning;

(b) The other air pollution sources in the vicinity of the proposed burning;

(c) The availability of other methods of disposal, and special circumstances or conditions that may impose a hardship on an applicant;

(d) The frequency of the need to dispose of similar materials in the past and expected in the future;

(e) The applicant's prior violations, if any;

(f) The projected effect upon persons and property in the vicinity; and

(g) Any other relevant factor.

(6) Each letter permit issued by the Department pursuant to section (2) of this rule must contain at least the following elements:

(a) The location where burning is permitted to take place.

(b) The number of actual calendar days on which burning is permitted to take place, not to exceed seven. Burning pursuant to a permit for yard debris must be limited to three days per season unless satisfactory justification for more burning is provided by the applicant.

(c) The period during which the permit is valid, not to exceed a period of 30 consecutive days, except a permit for yard debris. The actual period in the permit must be specific to the needs of the applicant. The Department may issue specific letter permits for shorter periods.

(d) A letter permit for yard debris is valid for a single burning season or for both the spring and fall burning seasons during a calendar year, as appropriate to the application and the fee paid pursuant to the schedule in section (10) of this rule. The spring burning is from March 1 to June 15, inclusive, and the fall burning season is from October 1 to December 15, inclusive.

(e) Equipment and methods required to be used by the applicant to insure that the burning is accomplished in the most efficient manner over the shortest period of time to minimize smoke production.

(f) The limitations, if any, based on meteorological conditions required before burning may occur. Open burning under permits for yard debris must be limited to the hours and times that limit seasonal domestic yard debris burning permitted in the county where the burning under the letter permit is to occur.

(g) Reporting requirements for both starting the fire each day and completion of the requested burning, (optional for permits for yard debris).

(h) A statement that OAR 340-264-0050 and 340-264-0060 are fully applicable to all burning under the permit.

(i) Such other conditions as the Department considers to be desirable.

(7) Regardless of the conditions contained in any letter permit, each letter permit, except permits for yard debris, will not be valid for more than 30 consecutive calendar days of which a maximum of seven can be used for burning. The Department may issue specific letter permits for shorter periods.

(8) Letter permits are not renewable. Any request to conduct additional burning requires a new application and a new permit.

(9) No person may violate any condition, limitation, or term of a letter permit.

(10) All applications for a letter permit for yard debris must be accompanied by a permit fee payable to the Department, or approved delegated authority, and become non-refundable upon issuance of the permit. The fee to be submitted is:

(a) For a single burning season, spring or fall - \$20;

(b) For a calendar year - \$30.

(11) The Department may waive the single season permit fee if the applicant shows that the cost of the yard debris permit presents an extreme financial hardship in relation to the household income and expenses of the applicant.

*State effective: 12/15/2000; EPA effective: 5/28/2013; 78 FR 24347*

### **340-264-0190 Forced Air Pit Incinerators**

Forced-air pit incineration may be approved as an alternative to open burning prohibited by this Division, provided that the following conditions are met:

- (1) The person requesting approval of forced-air pit incineration must demonstrate to the satisfaction of the Department that no feasible or practicable alternative to forced-air pit incineration exists.
- (2) The forced-air pit incineration facility must be designed, installed, and operated in such a manner that visible emissions do not exceed 40 percent opacity, as measured by EPA Method 9, for more than three minutes out of any one hour of operation following the initial 30 minute startup period.
- (3) The person requesting approval of a forced-air pit incineration facility must submit a Notice of Construction and Application for Approval pursuant to OAR 340-210-0200 through 340-210-0220 before the department will approve any facility.
- (4) A forced-air pit permit for operation of a forced-air pit incineration facility is required, based on the same conditions and requirements for letter permits in OAR 340-264-0180, except that both the term of the permit and the operation limit of the facility will be specified in the permit and must be appropriate to the purpose of the facility.

*State effective: 12/15/2000; EPA effective: 5/28/2013; 78 FR 24347*

## **DIVISION 266**

### **FIELD BURNING RULES (Willamette Valley)**

#### **340-266-0010 Introduction**

(1) This Division applies to the open field burning, propane flaming, and stack and pile burning of all perennial and annual grass seed and cereal grain crops, and associated residue within the Willamette Valley. The open burning of all other agricultural waste material, including sanitizing perennial and annual grass seed crops by open burning in counties outside the Willamette Valley, (referred to as “fourth priority agricultural burning”) is governed by OAR Chapter 340, Division 264, Rules for Open Burning. Enforcement procedure and civil penalties for open field burning, propane flaming, and stack and pile burning are established in OAR Chapter 340, Division 12.

(2) Organization of rules:

(a) OAR 340-266-0020 is the policy statement of the Environmental Quality Commission setting forth the goals of this Division;

(b) OAR 340-266-0030 contains definitions of terms which have specialized meanings within the context of this Division;

(c) OAR 340-266-0040 lists general provisions and requirements pertaining to all open field

burning, propane flaming, and stack and pile burning with particular emphasis on the duties and responsibilities of the grower registrant;

(d) OAR 340-266-0050 lists procedures and requirements for registration of acreage, issuance of permits, collection of fees, and keeping of records, with particular emphasis on the duties and responsibilities of the local permit issuing agencies;

(e) OAR 340-266-0060 establishes acreage limits and methods of determining acreage allocations;

(f) OAR 340-266-0070 establishes criteria for authorization of open field burning, propane flaming, and stack and pile burning pursuant to the administration of a daily smoke management control program;

(g) OAR 340-266-0080 establishes special provisions pertaining to field burning by public agencies for official purposes, such as “training fires”;

(h) OAR 340-266-0090 establishes special provisions pertaining to “preparatory burning”;

(i) OAR 340-266-0100 establishes special provisions pertaining to open field burning for experimental purposes;

(j) OAR 340-166-0110 establishes special provisions and procedures pertaining to emergency cessation of burning;

(k) OAR 340-266-0120 establishes provisions pertaining to propane flaming;

(l) OAR 340-266-0130 establishes provisions pertaining to “stack and piling burning”.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-266-0020 Policy**

In the interest of public health and welfare, it is the declared public policy of the State of Oregon to reduce the practice of open field burning while developing and providing alternative methods of field sanitation and alternative methods of utilizing and marketing grass seed and cereal grain straw residues and to control, reduce, and prevent air pollution from open field burning, propane flaming, and stack and pile burning by smoke management. In developing and carrying out a smoke management control program it is the policy of the Environmental Quality Commission:

(1) To provide for a maximum level of burning with a minimum level of smoke impact on the public, recognizing:

(a) The importance of flexibility and judgment in the daily decision-making process, within established and necessary limits;

- (b) The need for operational efficiency within and between each organizational level;
  - (c) The need for effective compliance with all regulations and restrictions.
- (2) To study, develop and encourage the use of reasonable and economically feasible alternatives to the practice of open field burning.
- (3) To increase the degree of public safety by preventing unwanted wild fires and smoke from open field burning, propane flaming, and stack burning near highways and freeways within the State of Oregon. The Environmental Quality Commission hereby adopts by reference, as rules of the Environmental Quality Commission, OAR 837-110-0110 through 837-110-0160, the rules of the State Fire Marshal filed with the Secretary of State on February 7, 1994. These rules shall apply to that area west of the Cascade Range and south to the Douglas/Lane County lines.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-266-0030 Definitions**

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies to this division.

- (1) “Actively Extinguish” means the direct application of water or other fire retardant to an open field fire.
- (2) “Approved Alternative Method(s)” means any method approved by the Department to be a satisfactory alternative field sanitation method to open field burning.
- (3) “Approved Alternative Facilities” means any land, structure, building, installation, excavation, machinery, equipment, or device approved by the Department for use in conjunction with an approved alternative method.
- (4) “Candidate Fields” means all grass seed or cereal grain fields being considered for open field burning or propane flaming.
- (5) “Commission” means the Environmental Quality Commission.
- (6) “Cumulative Hours of Smoke Intrusion in the Eugene-Springfield Area” means the average of the totals of cumulative hours of smoke intrusion recorded for the Eugene site and the Springfield site. Provided the Department determines that field burning was a significant contributor to the smoke intrusion:
  - (a) The Department shall record one hour of intrusion for each hour the nephelometer hourly reading exceeds a background level by  $1.8 \times 10^4$  b-scat units or more but less than the applicable value in subsection (b) or (c) of this section;

(b) Between June 16 and September 14 of each year, two hours of smoke intrusion shall be recorded for each hour the nephelometer hourly reading exceeds a background level by  $5.0 \times 10^4$  b-scat units;

(c) Between September 15 and June 15 of each year, two hours of intrusion shall be recorded for each hour the nephelometer hourly reading exceeds a background level by  $4.0 \times 10^4$  b-scat units;

(d) The background level shall be the average of the three hourly readings immediately prior to the intrusion.

(7) “Department” means the Department of Environmental Quality. The Department may enter into contracts with the Oregon Department of Agriculture or other agencies to carry out the purposes set forth in these rules.

(8) “Director” means the Director of the Department or delegated employee representative pursuant to ORS 468.045(3).

(9) “District Allocation” means the total amount of acreage sub-allocated annually to the fire district, based on the district’s pro rata share of the maximum annual acreage limitation, representing the maximum amount for which burning permits may be issued within the district, subject to daily authorization. District allocation is defined by the following identity:

District Allocation =

$$\frac{\text{Maximum annual acreage limit}}{\text{(Total acreage registered in the District)}} \times \text{Total acreage registered in the Valley}$$

(10) “Drying Day” means a 24-hour period during which the relative humidity reached a minimum less than 50 percent and no rainfall was recorded at the nearest reliable measuring site.

(11) “Effective Mixing Height” means either the actual height of plume rise as determined by aircraft measurement or the calculated or estimated mixing height as determined by the Department, whichever is greater.

(12) “Field-by-Field Burning” means burning on a limited or restricted basis in which the amount, rate, and area authorized for burning is closely controlled and monitored. Included under this definition are “training fires” and experimental open field burning.

(13) “Field Reference Code” means a unique four-part code which identifies a particular registered field for mapping purposes. The first part of the code shall indicate the grower registration (form) number, the second part the line number of the field as listed on the registration form, the third part the crop type, and the fourth part the size (acreage) of the field

(e.g., a 35 acre perennial (bluegrass) field registered on Line 2 of registration form number 1953 would be 1953-2-P-BL-35).

(14) “Fire District” or “District” means a fire permit issuing agency.

(15) “Fire Permit” means a permit issued by a local fire permit issuing agency pursuant to ORS 477.515, 477.530, 476.380, or 478.960.

(16) “Fires-Out Time” means the time announced by the Department when all flames and major smoke sources associated with open field burning should be out and prohibition conditions are scheduled to be imposed.

(17) “Fire Safety Buffer Zone” shall have the same meaning as defined in the State Fire Marshal rules.

(18) “Fluffing” means an approved mechanical method of stirring or tedding crop residues for enhanced aeration and drying of the full fuel load, thereby improving the field’s combustion characteristics.

(19) “Grower Allocation” means the amount of acreage sub-allocated annually to the grower registrant, based on the grower registrant’s pro rata share of the maximum annual acreage limitation, representing the maximum amount for which burning permits may be issued, subject to daily authorization. Grower allocation is defined by the following identity:

$$\text{Grower Allocation} = \frac{\text{Maximum annual acreage limit}}{\text{Total acreage registered in the Valley}} \times \text{Total acreage registered by the grower registrant}$$

(20) “Grower Registrant” means any person who registers acreage with the Department for purposes of open field burning, propane flaming, or receives a permit to stack or pile burn.

(21) “Marginal Conditions” means atmospheric conditions such that smoke and particulate matter escape into the upper atmosphere with some difficulty but not such that limited additional smoke and particulate matter would constitute a danger to the public health and safety.

(22) “Marginal Day” means a day on which marginal conditions exist.

(23) “Nephelometer” means an instrument for measuring ambient smoke concentrations.

(24) “Northerly Winds” means winds coming from directions from 290E to 90E in the north part of the compass, averaged through the effective mixing height.

(25) “Open Field Burning” means burning of any perennial or annual grass seed or cereal grain

crop, or associated residue, in such manner that combustion air and combustion products are not effectively controlled.

(26) “Open Burning” means the burning of agricultural, construction, demolition, domestic, or commercial waste or any other burning which occurs in such a manner that combustion air is not effectively controlled and combustion products are not effectively vented through a stack or chimney pursuant to OAR 340-264-0030.

(27) “Open Field Burning Permit” means a permit issued by the Department pursuant to ORS 468A.575.

(28) “Permit Issuing Agency” or “Permit Agent” means the county court or board of county commissioners, or fire chief or a rural fire protection district or other person authorized to issue fire permits pursuant to ORS 477.515, 477.530, 476.380, or 478.960.

(29) “Preparatory Burning” means controlled burning of portions of selected problem fields for the specific purpose of reducing the fire hazard potential or other conditions which would otherwise inhibit rapid ignition burning when the field is subsequently open burned.

(30) “Priority Acreage” means acreage located within a priority area.

(31) “Priority Areas” means the following areas of the Willamette Valley:

(a) Areas in or within three miles of the city limits of incorporated cities having populations of 10,000 or greater;

(b) Areas within one mile of airports servicing regularly scheduled airline flights;

(c) Areas in Lane County south of the line formed by U.S. Highway 126 and Oregon Highway 126;

(d) Areas in or within three miles of the city limits of the City of Lebanon;

(e) Areas on the west and east side of and within 1/4 mile of these highways: 99, 99E, and 99W. Areas on the south and north side of and within 1/4 mile of U.S. Highway 20 between Albany and Lebanon, Oregon Highway 34 between Lebanon and Corvallis, Oregon Highway 228 from its junction south of Brownsville to its rail crossing at the community of Tulsa.

(32) “Prohibition Conditions” means conditions under which open field burning is not allowed except for individual burns specifically authorized by the Department pursuant to OAR 340-266-0070(2).

(33) “Propane Flaming” means a mobile flamer device which meets the following design specifications and utilizes an auxiliary fuel such that combustion is nearly complete and

emissions are significantly reduced:

(a) Flamer nozzles shall not be more than 15 inches apart;

(b) A heat deflecting hood is required and shall extend a minimum of three feet beyond the last row of nozzles.

(34) “Propane Flaming Permit” means a permit issued by the Department pursuant to ORS 468A.575 and consisting of a validation number and specifying the conditions and acreage specifically registered and allocated for propane flaming.

(35) “Quota” means an amount of acreage established by the Department for each fire district for use in authorizing daily burning limits in a manner to provide, as reasonably as practicable, an equitable opportunity for burning in each area.

(36) “Rapid Ignition Techniques” means a method of burning in which all sides of the field are ignited as rapidly as practicable in order to maximize plume rise. Little or no preparatory backfire burning shall be done.

(37) “Released Allocation” means that part of a growers allocation, by registration form, that is unused and voluntarily released to the Department for first come-first serve dispersal to other grower registrants.

(38) “Residue” means straw, stubble and associated crop material generated in the production of grass seed and cereal grain crops.

(39) “Responsible Person” means each person who is in ownership, control, or custody of the real property on which open burning occurs, including any tenant thereof, or who is in ownership, control or custody of the material which is burned, or the grower registrant. Each person who causes or allows open field burning, propane flaming, or stack or pile burning to be maintained shall also be considered a responsible person.

(40) “Small-Seeded Seed Crops Requiring Flame Sanitation” means small-seeded grass, legume, and vegetable crops, or other types approved by the Department, which are planted in early autumn, are grown specifically for seed production, and which require flame sanitation for proper cultivation. For purposes of this Division, clover and sugar beets are specifically included. Cereal grains, hairy vetch, or field peas are specifically not included.

(41) “Smoke Management” means a system for the daily or hourly control of open field burning, propane flaming, or stack or pile burning through authorization of the times, locations, amounts and other restrictions on burning, so as to provide for suitable atmospheric dispersion of smoke particulate and to minimize impact on the public.

(42) “Southerly Winds” means winds coming from directions from 90E to 290E in the south part

of the compass, averaged through the effective mixing height.

(43) “Stack Burning” means the open burning of bound, baled, collected, gathered, accumulated, piled or stacked straw residue from perennial or annual grass seed or cereal grain crops.

(44) “Stack Burning Permit” means a permit issued by the Department pursuant to ORS468A.575 that identifies the responsible person, date of permit issuance, and specifies the acreage and location authorized for stack or pile burning.

(45) “Test Fires” means individual field burns specifically authorized by the Department for the purpose of determining or monitoring atmospheric dispersion conditions.

(46) “Training Fires” means individual field burns set by or for a public agency for the official purpose of training personnel in fire-fighting techniques.

(47) “Unusually High Evaporative Weather Conditions” means a combination of meteorological conditions following periods of rain which result in sufficiently high rates of evaporation, as determined by the Department, where fuel (residue) moisture content would be expected to approach about 12 percent or less.

(48) “Validation Number” means:

(a) For open field burning a unique five-part number issued by the Department or its delegate identifying a specific field and acreage allowed to be open field burned and the date and time the permit was issued (e.g., a validation number issued August 26 at 2:30 p.m. for a 70-acre burn for a field registered on Line 2 of registration form number 1953 would be 1953-2-0826-1430-070);

(b) For propane flaming and stack or pile burning a unique five part alphanumerical, issued by the Department or its delegate, identifying a specific field and acreage allowed to be propane flamed or stack or pile burned, the date and time the permit was issued, and the burn type (e.g., a validation number issued on July 15 for a 100 acre field to be propane flamed registered on Line 4 of registration form 9999 would be 9999-4-0715-P-100.

(49) “Ventilation Index (VI)” means a calculated value used as a criterion of atmospheric ventilation capabilities. The Ventilation Index as used in this Division is defined by the following identity:

VI =

$$\frac{\text{Effective mixing height (feet)}}{1,000 \times \text{Average wind speed through the effective mixing height (knots)}}$$

(50) “Willamette Valley” means the areas of Benton, Clackamas, Lane, Linn, Marion, Multnomah, Polk, Washington, and Yamhill Counties lying between the crest of the Coast Range

and the crest of the Cascade Mountains, and includes the following:

(a) “South Valley”, the areas of jurisdiction of all fire permit issuing agents or agencies in the Willamette Valley portions of the counties of Benton, Lane, or Linn;

(b) “North Valley”, the areas of jurisdiction of all other fire permit issuing agents or agencies in the Willamette Valley.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-266-0040 General Requirements**

(1) No person shall cause or allow open field burning or propane flaming on any acreage unless said acreage has first been registered and mapped pursuant to OAR 340-266-0050(1), the registration fee has been paid, and the registration (permit application) has been approved by the Department.

(2) No person shall cause or allow open field burning, propane flaming, or stack or pile burning without first obtaining and being able to readily demonstrate a valid burning permit and fire permit from the appropriate permit issuing agent pursuant to OAR 340-266-0050(2). On the specific day of and prior to open the field burning, propane flaming, or pile or stack burning of any grass seed or cereal grain crop or associated residue the grower registrant shall obtain, in person or by telephone, a valid burning permit and fire permit from the appropriate permit issuing agent pursuant to OAR 340-266-0050.

(3) The Department may prohibit any person from registering acreage for open field burning or propane flaming and may deny burn permits for open field burning, propane flaming, and stack and pile burning until all delinquent registration fees, late fees, and burn permit fees from previous seasons are paid. The Department may also institute appropriate legal action to collect the delinquent fees.

(4) No person shall open field burn cereal grain acreage unless that person first issues to the Department a signed statement, and then acts to insure, that said acreage will be planted in the following growing season to a small-seeded seed crop requiring flame sanitation for proper cultivation, as defined in OAR 340-266-0030(40).

(5) No person shall cause or allow open field burning, propane flaming, or stack or pile burning which is contrary to the Department’s announced burning schedule specifying the times, locations and amounts of burning permitted, or to any other provision announced or set forth by the Department or this Division.

(6) Each responsible person open field burning or propane flaming shall have an operating radio receiver and shall directly monitor the Department’s burn schedule announcements at all times while open field burning or propane flaming.

(7) Each responsible person open field burning or propane flaming shall actively extinguish all

flames and major smoke sources when prohibition conditions are imposed by the Department or when instructed to do so by an agent or employee of the Department.

(8) No person shall cause or allow open field burning or stack or pile burning within 1/4 mile of either side of any Interstate freeway within the Willamette Valley or within 1/8 mile of either side of the designated roadways listed in OAR 837-110-0080(2)(c). In addition, no person shall cause or allow open field burning in any of the remaining area within a fire safety buffer zone unless a noncombustible ground surface has been provided between the field to be burned and the nearest edge of the roadway right-of-way as required by OAR 837-110-0080.

(9) Each responsible person open field burning, propane flaming, or stack or pile burning within a priority area or fire safety buffer zone around a designated city, airport or highway shall refrain from burning and promptly extinguish any burning if it is likely that the resulting smoke would noticeably affect the designated city, airport or highway.

(10) Each responsible person open field burning shall make every reasonable effort to expedite and promote efficient burning and prevent excessive emissions of smoke by:

(a) Meeting all of the State Fire Marshal requirements specified in OAR 837-110-0040 through 837-110-0080;

(b) Ensuring field residues are evenly distributed, dry, and in good burning condition;

(c) Employing rapid ignition techniques on all acreage where there are no imminent fire hazards or public safety concerns.

(11) Open field burning, propane flaming, or stack or pile burning in compliance with this Division does not exempt any person from any civil or criminal liability for consequences or damages resulting from such burning, nor does it exempt any person from complying with any other applicable law, ordinance, regulation, rule, permit, order or decree of the Commission or any other government entity having jurisdiction.

(12) Any revisions to the maximum acreage to be burned, allocation or permit issuing procedures, or any other substantive changes to this Division affecting open field burning, propane flaming, or stack or pile burning for any year shall be made prior to June 1 of that year. In making such changes, the Commission shall consult with Oregon State University.

(13) Open field burning shall be regulated in a manner consistent with the requirements of the Oregon Visibility Protection Plan for Class I Areas (Section 5.2 of the State of Oregon Clean Air Act Implementation Plan adopted under OAR 340-200-0040).

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-266-0050 Registration, Permits, Fees, Records**

In administering a field burning smoke management program, the Department may contract with

counties or fire districts or other responsible individual to administer registration of acreage, issuance of permits, collection of fees, and keeping of records for open field burning, propane flaming, or stack or pile burning within their permit jurisdictions. The Department shall pay said authority for these services in accordance with the payment schedule provided for in ORS 468A.615. Three-quarters of said payment shall be made prior to July 1 of each year and the remainder shall be paid within ten days after completion of the end of season reconciliation:

(1) Registration of acreage:

(a) On or before April 1 of each year, each grower intending to open burn or propane flame under this Division shall register the total acreage to be open burned or propane flamed. Said acreage shall be registered with the Department or its authorized permit agent on the registration forms provided. Candidate fields for open burning or propane flaming shall be listed on the registration form and shall also be delineated on specially provided registration map materials and identified using a unique field reference code. Registration, listing of fields, and mapping shall be completed according to the established procedures of the Department. At the time of registration, a non-refundable registration fee of \$2 shall be paid for each acre registered for open field burning and \$1 shall be paid for each acre registered for propane flaming. The registration fees for open field burning and propane flaming shall be paid into separate designated accounts. A complete registration (permit application) shall consist of a fully executed registration form, map and fee. Acreage registered by April 1 may be issued a burn permit if:

(A) Allocation is available; and

(B) The initial registration fee account has a sufficient balance.

(b) Registration of open field burning and propane flaming acreage after April 1 of each year shall require the prior approval of the Department and an additional \$1 per acre late registration fee. The late registration fee shall not be charged if the late registration is not due to the fault of the registrant or one under the registrant's control;

(c) Copies of all registration forms and fees shall be forwarded to the Department promptly by the permit agent. Registration map materials shall be made available to the Department at all times for inspection and reproduction;

(d) The Department shall act on any registration application within 60 days of receipt of a completed application. The Department may deny or revoke any registration application which is incomplete, false or contrary to state law or this Division;

(e) The grower registrant shall insure the information presented on the registration form and map is complete and accurate.

(2) Permits:

(a) Permits for open field burning, propane flaming, or stack or pile burning shall be issued by the Department, or its authorized permit agent, to the grower registrant in accordance with the established procedures of the Department, and the times, locations, amounts and other restrictions set forth by the Department or this Division;

(b) A fire permit from the local fire permit issuing agency is also required for all open burning pursuant to ORS 477.515, 477.530, 476.380, 478.960;

(c) A valid open field burning permit shall consist of:

(A) An open field burning permit issued by the Department which specifies the permit conditions in effect at all times while burning and which identifies the acreage specifically registered and annually allocated for burning;

(B) A validation number issued by the local permit agent on the day of the burn identifying the specific acreage allowed for burning and the date and time the permit was issued.

(d) A valid propane flaming permit shall consist of:

(A) A propane flaming permit issued by the Department which specifies the permit conditions in effect at all times while flaming and which identifies the acreage specifically registered and annually allocated for propane flaming;

(B) A validation number issued by the local permit agent identifying the specific acreage allowed for propane flaming and the date and time the permit was issued.

(e) A valid stack or pile burning permit shall consist of the name of the responsible person and date the permit was issued, and shall specify the acreage and location authorized;

(f) Each responsible person open field burning, propane flaming, or stack or pile burning shall pay a per acre burn fee within ten days of the date the permit was issued. The fee shall be:

(A) \$8 per acre sanitized by open field burning;

(B) \$2 per acre sanitized by propane flaming;

(C) For all acreage burned in stacks or piles:

(i) \$2 per acre from January 1, 1992 to December 31, 1997;

(ii) \$4 per acre burn fee in 1998;

(iii) \$6 per acre burn fee in 1999;

(iv) \$8 per acre burn fee in 2000; and

(v) \$10 per acre burn fee in 2001 and thereafter.

(D) For grass seed and cereal grain residue from previous seasons, broken bales, or fields where a portion of straw was removed using usual or standard baling methods, the acreage actually burned shall be estimated and the same per acre fee as imposed in paragraph (C) of this subsection shall be charged. The estimated acreage shall be rounded to the nearest whole acre.

(g) Burning permits shall at all times be limited by and subject to the burn schedule and other requirements or conditions announced or set forth by the Department;

(h) No person shall issue burning permits for open field burning, propane flaming, or stack or pile burning of:

(A) More acreage than the amount sub-allocated annually to the District by the Department pursuant to OAR 266-0060(2);

(B) Priority or fire safety buffer zone acreage located on the upwind side of any city, airport, Interstate freeway or highway within the same priority area or buffer zone.

(i) It is the responsibility of each local permit issuing agency to establish and implement a system for distributing open field burning, propane flaming, or stack or pile burning permits to individual grower registrants when burning is authorized, provided that such system is fair, orderly and consistent with state law, this Division and any other provisions set forth by the Department.

(3) Fees:

(a) Permit agents shall collect, properly document, and promptly forward all required registration, late registration fees, and burn fees to the Department;

(b) All fees shall be deposited in the State Treasury to the credit of the Department of Agriculture Service Fund and shall be appropriated pursuant to ORS468A.550 to 468A.620.

(4) Records:

(a) Permit agents shall at all times keep proper and accurate records of all transactions pertaining to registrations, permits, fees, allocations, and other matters specified by the Department. Such records shall be kept by the permit agent for a period of at least five years and made available for inspection by the appropriate authorities;

(b) Permit agents shall submit to the Department on specially provided forms weekly reports of all acreage burned in their permit jurisdictions. These reports shall cover the weekly period of Monday through Sunday, and shall be mailed and post-marked no later than the first working day

of the following week.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-266-0060 Acreage Limitations, Allocations**

#### **(1) Limitation of Acreage:**

(a) Except for acreage and residue open field burned pursuant to OAR 340266-0100 through OAR 340-266-0130, the maximum acreage to be open field burned annually in the Willamette Valley under this Division shall not exceed:

(A) 120,000 acres for 1994 and 1995;

(B) 100,000 acres for 1996 and 1997; and

(C) 40,000 acres for 1998 and thereafter.

(b) Notwithstanding the annual limitations, up to 25,000 acres of steep terrain and species identified by the Director of Agriculture may be open field burned or propane flamed annually and shall be considered outside the limitation;

(c) Other limitations on acreage allowed to be open field burned are specified in OAR 340-266-0070(7), 340-266-0080(2), 340-266-0090(1) and 340-266-0100(1);

(d) The maximum acreage to be propane flamed annually in the Willamette Valley under this Division shall not exceed 75,000 acres;

(e) Other limitations on acreage allowed to be propane flamed are specified in OAR340-266-0120.

#### **(2) Allocation of Acreage:**

(a) In the event that total registration as of April 1 is less than or equal to the maximum acreage allowed to be open field burned or propane flamed annually, pursuant to subsection (1)(a) and (d) of this rule, the Department shall sub-allocate to each grower registrant and each district (subject to daily burn authorization) 100 percent of their respective registered acreage;

(b) In the event that total registration as of April 1 exceeds the maximum acreage allowed to be open field burned or propane flamed annually, pursuant to subsection (1)(a) of this rule, the Department may sub-allocate to growers on a pro rata share basis not more than 100 percent of the maximum acreage limit, referred to as "grower allocation". In addition, the Department shall sub-allocate to each respective fire district, its pro rata share of the maximum acreage limit based on acreage registered within the district, referred to as "district allocation";

(c) To ensure optimum permit utilization, the Department may adjust fire district allocations;

(d) Transfer of allocations for farm management purposes may be made within and between fire districts and between grower registrants on a one-in/one-out basis under the supervision of the Department. The Department may assist grower registrants by administering a reserve of released allocation for first come-first served utilization.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-266-0070 Daily Burning Authorization Criteria**

As part of the Smoke Management Program provided for in ORS 468A.590, the Department shall set forth the types and extent of open field burning, propane flaming, and stack and pile burning to be allowed each day according to the provisions established in this section and this Division:

(1) During the active burning season and on an as needed basis, the Department shall announce the burning schedule over the burning radio network operated specifically for this purpose. The schedule shall specify the times, locations, amounts and other restrictions in effect for open field burning, propane flaming, and stack and pile burning. The Department shall notify the State Fire Marshal of the burning schedule for dissemination to appropriate Willamette Valley agencies.

(2) Prohibition conditions:

(a) Prohibition conditions shall be in effect at all times unless specifically determined and announced otherwise by the Department;

(b) Under prohibition conditions, no permits shall be issued and no open field burning shall be conducted in any area except for individual burns specifically authorized by the Department on a limited extent basis. Such limited burning may include field-by-field burning, preparatory burning, or burning of test fires, except that:

(A) No open field burning shall be allowed:

(i) In any area subject to a ventilation index of less than 10.0;

(ii) In any area upwind, or in the immediate vicinity, of any area in which, based upon real-time monitoring, a violation of federal or state air quality standards is projected to occur.

(B) Only test-fire burning may be allowed:

(i) In any area subject to a ventilation index of between 10.0 and 15.0, inclusive, except for experimental burning specifically authorized by the Department pursuant to OAR 340-266-0100;

(ii) When relative humidity at the nearest reliable measuring station exceeds 50 percent under forecast northerly winds or 65 percent under forecast southerly winds.

(3) Marginal conditions:

(a) The Department shall announce that marginal conditions are in effect and open field burning is allowed when, in its best judgment and within the established limits of this Division, the prevailing atmospheric dispersion and burning conditions are suitable for satisfactory smoke dispersal with minimal impact on the public, provided that the minimum conditions set forth in paragraphs (2)(b)(A) and (B) of this rule are satisfied;

(b) Under marginal conditions, permits may be issued and open field burning may be conducted in accordance with the times, locations, amounts, and other restrictions set forth by the Department and this Division.

(4) Hours of burning:

(a) Burning hours shall be limited to those specifically authorized by the Department each day and may be changed at any time when necessary to attain and maintain air quality;

(b) Burning hours may be reduced by the fire chief or his deputy, and burning may be prohibited by the State Fire Marshal, when necessary to prevent danger to life or property from fire, pursuant to ORS 478.960.

(5) Locations of burning:

(a) Locations of burning shall at all times be limited to those areas specifically authorized by the Department; except that

(b) No priority or fire safety buffer zone acreage shall be burned upwind of any city, airport, Interstate freeway or highway within the same priority area or buffer zone;

(c) No south Valley priority acreage shall be burned upwind of the Eugene-Springfield non-attainment area.

(6) Amounts of burning:

(a) To provide for an efficient and equitable distribution of burning, daily authorizations of acreages shall be issued by the Department in terms of single or multiple fire district quotas. The Department shall establish quotas for each fire district and may adjust the quotas of any district when conditions in its judgment warrant such action;

(b) Unless otherwise specifically announced by the Department, a one quota limit shall be considered in effect for each district authorized for burning;

(c) The Department may issue more restrictive limitations on the amount, density or frequency of burning in any area or on the basis of crop type, when conditions in its judgment warrant such action.

(7) Limitations on burning based on air quality:

(a) The Department shall establish the minimum allowable effective mixing height required for burning based upon cumulative hours of smoke intrusion in the Eugene-Springfield area as follows;

(b) Except as provided in paragraph (C) of this subsection, burning shall not be permitted whenever the effective mixing height is less than the minimum allowable height specified in **Table 1**, and by reference made a part of this Division;

(c) Notwithstanding the effective mixing height restrictions of paragraph (b) of this subsection, the Department may authorize burning of up to 1,000 acres total per day for the Willamette Valley, consistent with smoke management considerations and this Division.

(8) Limitations on burning based on rainfall:

(a) Open field burning and propane flaming shall be prohibited in any area for one drying day (up to a maximum of four consecutive drying days) for each 0.10 inch increment of rainfall received per day at the nearest reliable measuring station;

(b) The Department may waive the restrictions of subsection (a) of this section when dry fields are available as a result of special field preparation or condition, irregular rainfall patterns, or unusually high evaporative weather condition.

(9) Other discretionary provisions and restrictions:

(a) The Department may require special field preparations before burning, such as, but not limited to, mechanical fluffing of residues, when conditions in its judgment warrant such action;

(b) The Department may designate specified periods following permit issuance within which time active field ignition must be initiated and/or all flames must be actively extinguished before said permit is automatically rendered invalid;

(c) The Department may designate additional areas as priority areas when conditions in its judgment warrant such action.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

**340-266-0080 Burning by Public Agencies (Training Fires)**

Open field burning on grass seed or cereal grain acreage by or for any public agency for official purposes, including the training of fire-fighting personnel, may be permitted by the Department on a prescheduled basis consistent with smoke management considerations and subject to the following conditions:

(1) Such burning must be deemed necessary by the official local authority having jurisdiction and must be conducted in a manner consistent with its purpose.

(2) Such burning must be limited to the minimum number of acres and occasions reasonably needed but in no case exceed 35 acres per fire or occasion.

(3) The responsible person shall comply with the provisions of OAR 340-266-0040 through 340-266-0060.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-266-0090 Preparatory Burning**

The Department encourages the preparatory burning of portions of selected problem fields to reduce or eliminate potential fire hazards and safety problems and to expedite the subsequent burning of the field. Such burning shall be consistent with smoke management considerations and subject to the following conditions:

(1) Each responsible person shall limit the acres burned to the minimum necessary to eliminate potential fire hazards or safety problems but in no case exceed five acres for each burn unless specifically authorized by the Department.

(2) Each responsible person conducting preparatory burning shall employ backfiring burning techniques.

(3) Each responsible person conducting preparatory burning shall comply with the provisions of OAR 340-266-0040 through 340-266-0060 and OAR 837-110-0010 through 837-110-0090.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-266-0100 Experimental Burning**

The Department may allow open field burning for demonstration or experimental purposes pursuant to the provisions of ORS 468A.620, consistent with smoke management considerations and subject to the following conditions:

(1) Acreage experimentally open field burned, propane flamed, or stack or pile burned shall not exceed 1,000 acres annually.

(2) Acreage experimentally burned shall not apply to the district allocation or to the maximum annual acreage limit specified in OAR 340-266-0060(1)(a) or (d).

(3) Such burning is exempt from the provisions of OAR 340-266-0070 but must comply with the provisions of OAR 340-266-0040 and 340-266-0050, except that the Department may elect to waive all or part of the per acre open field burning or propane flaming fee.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-266-0110 Emergency Burning Cessation**

Pursuant to ORS 468A.610 and upon finding of extreme danger to public health or safety, the Commission may order temporary emergency cessation of all open field burning in any area of the Willamette Valley.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-266-0120 Propane Flaming**

(1) The use of propane flammers, mobile field sanitizing devices, and other field sanitation methods specifically approved by the Department are subject to the following conditions:

(a) The field shall first be prepared as follows:

(A) Either the field must have previously been open burned and the appropriate fees paid; or

(B) The field stubble must be flail-chopped, mowed, or otherwise cut close to the ground and the loose straw removed so the remaining stubble will not sustain an open fire.

(b) Propane flaming operations shall comply with the following criteria:

(A) Unless otherwise specifically restricted by the Department propane flaming may be conducted only between the hours of 9 a.m. and sunset between June 1 and August 31 of each year and (9 a.m. to 1/2 hour before sunset between September 1 and October 14 of each year;

(B) Propane flammers shall be operated in overlapping strips, crosswise to the prevailing wind, beginning along the downwind edge of the field;

(C) No person shall cause or allow propane flaming which results in sustained open fire. Should sustained open fire create excessive smoke all flame and smoke sources shall be immediately and actively extinguished;

(D) No person shall cause or allow any propane flaming which results in visibility impairment on any Interstate highways or roadways specified in OAR 837-110-0080(1) and (2). Should visibility impairment occur, all flame and smoke sources shall be immediately and actively extinguished;

(E) The acreage must be registered and permits obtained pursuant to OAR340-266-0050;

(F) No person shall cause or allow propane flaming when either the relative humidity at the nearest reliable measuring station exceeds 65 percent or the surface winds exceed 15 miles per hour;

(G) All regrowth over eight inches in height shall be mowed or cut close to the ground and removed.

(c) All propane flaming operations shall be conducted in accordance with the State Fire Marshal's safety requirements specified in OAR 837-110-0100 through 837-110-0160;

(d) No person shall cause or allow to be initiated or maintained any propane flaming or other mobile fire sanitation methods not certified by the Department on any day or at any time if the Department has determined and notified the State Fire Marshal that propane flaming is prohibited because of adverse meteorological or air quality conditions.

(2) The Department may issue restrictive limitations on the amount, density or frequency of propane flaming or other mobile fire sanitation methods in any area when meteorological conditions are unsuitable for adequate smoke dispersion, or deterioration of ambient air quality occurs.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

### **340-266-0130 Stack Burning**

The open burning of piled or stacked residue from perennial or annual grass seed or cereal grain crops used for seed production is allowed subject to the following conditions:

(1) No person shall cause or allow to be initiated or maintained any stack or pile burning on any day or at any time if the Department has notified the State Fire Marshal that such burning is prohibited because of meteorological or air quality conditions.

(2) No person shall cause or allow stack or pile burning of any grass seed or cereal grain residue unless said residue is dry and free of all other combustible and non-combustible material.

(3) Each responsible person shall make every reasonable effort to promote efficient burning, minimize smoke emissions, and extinguish any stack burning which is in violation of any rule of the Commission.

(4) No stack or pile burning shall be conducted within any State Fire Marshal buffer zone "non-combustible ground surface" area (e.g., within 1/4 mile of Interstate I-5, or 1/8 mile of any designated roadway), as specified in OAR 837-110-0080.

(5) The acreage must be permitted pursuant to OAR 340-266-0050.

(6) Unless otherwise specifically agreed by the parties, after the straw is removed from the fields of the grower, the responsibility for the further disposition of the straw, including burning or disposal, and payment of the appropriate fees, shall be upon the person who bales, removes, controls, or is in possession of the straw.

TABLE 1 (OAR 340-266-0070)
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MINIMUM ALLOWABLE EFFECTIVE MIXING HEIGHT REQUIRED FOR BURNING BASED UPON THE CUMULATIVE HOURS OF SMOKE INTRUSION IN THE EUGENE-SPRINGFIELD AREA	
Cumulative Hours of Smoke Intrusion in the <u>Eugene- Springfield Area</u>	Minimum Allowable Effective <u>Mixing Height (feet)</u>
0 - 14	No minimum
15 - 19	4,000
20 - 24	4,500
25 and greater	5,500

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

## DIVISION 268

### EMISSION REDUCTION CREDITS

#### **340-268-0010 Applicability**

This division applies to all sources in the state.

*State effective: 7/1/2001; EPA effective: 3/24/2003; 68 FR 2891*

#### **340-268-0020 Definitions**

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies to this division.

*State effective: 10/14/1999; EPA effective: 3/24/2003; 68 FR 2891*

#### **340-268-0030 Emissions Reduction Credits**

Any person who reduces emissions by implementing more stringent controls than required by a permit or an applicable regulation may create an emission reduction credit. Emission reduction credits must be created and banked within two years from the time of actual emission reduction.

(1) Creating Emission Reduction Credits. Emission reductions can be considered credits if all of the following requirements are met:

(a) The reduction is permanent due to continuous overcontrol, curtailment or shutdown of an

existing activity or device.

(b) The reduction is in terms of actual emissions reduced at the source. The amount of the creditable reduction is the difference between the contemporaneous (any consecutive 12 calendar month period during the prior 24 calendar months) pre-reduction actual (or allowable, whichever is less) emissions and the post-reduction allowable emissions from the subject activity or device.

(c) The reduction is either:

(A) Enforceable by the Department through permit conditions or rules adopted specifically to implement the reduction that make increases from the activity or device creating the reduction a violation of a permit condition; or

(B) The result of a physical design that makes such increases physically impossible.

(d) The reduction is surplus. Emission reductions must be in addition to any emissions used to attain or maintain NAAQS in the SIP.

(e) Sources in violation of air quality emission limitations may not create emission reduction credits from those emissions that are or were in violation of air quality emission limitations.

(2) Banking of Emission Reduction Credits.

(a) The life of emission reduction credits may be extended through the banking process as follows:

(A) Emission reduction credits may be banked for ten years from the time of actual emission reduction.

(B) Requests for emission reduction credit banking must be submitted within the 2 year (24 calendar month) contemporaneous time period immediately following the actual emission reduction. (The actual emission reduction occurs when the airshed experiences the reduction in emissions, not when a permit is issued or otherwise changed).

(b) Banked emission reduction credits are protected during the banked period from rule required reduction, if the Department receives the emission reduction credit banking request before the Department submits a notice of a proposed rule or plan development action for publication in the Secretary of State's bulletin. The Commission may reduce the amount of any banked emission reduction credit that is protected under this section, if the Commission determines the reduction is necessary to attain or maintain an ambient air quality standard.

(c) Emission reductions must be in the amount of ten tons per year or more to be creditable for banking, except as follows:

(A) In the Medford-Ashland AQMA, PM10 emission reductions must be at least 3 tons per year.

(B) In Lane County, LRAPA may adopt lower levels.

(d) Emission reduction credits will not expire pending the Department taking action on a timely banking request unless the 10 year period available for banking expires.

(3) Using Emission reduction Credits: Emission reduction credits may be used for:

(a) Netting actions within the source that generated the credit, through a permit modification; or

(b) Offsets pursuant to the New Source Review program (OAR 340 division 224) and the Net Air Quality Benefit requirements of OAR 340-225-0090.

(4) Unused Emission Reduction Credits

(a) Emission reduction credits that are not used, and for which the Department does not receive a request for banking within the contemporaneous time period, will become unassigned emissions for purposes of the Plant Site Emission Limit (PSEL).

(b) Emission Reduction credits that are not used prior to the expiration date of the credit will revert to the source that generated the credit and will be treated as unassigned emissions for purposes of the PSEL pursuant to OAR 340-222-0045.

(5) Emission Reduction Credit (ERC) Permit

(a) The Department tracks ERC creation and banking through the permitting process. The holder of ERCs must maintain either an ACDP, Title V permit, or an ERC Permit.

(b) The Department issues ERC Permits for anyone who is not subject to the ACDP or Title V programs that requests an ERC or an ERC to be banked.

(c) An ERC permit will only contain conditions necessary to make the emission reduction enforceable and track the credit.

(d) Requests for emission reduction credit banking must be submitted in writing to the Department and contain the following documentation:

(A) A detailed description of the activity or device controlled or shut down;

(B) Emission calculations showing the types and amounts of actual emissions reduced, including pre-reduction actual emission and post-reduction allowable emission calculations;

(C) The date or dates of actual reductions;

(D) The procedure that will render such emission reductions permanent and enforceable;

(E) Emission unit flow parameters including but not limited to temperature, flow rate and stack height;

(F) Description of short and long term emission reduction variability (if any).

(e) Requests for emission reduction credit banking must be submitted to the Department within two years (24 months) of the actual emissions reduction. The Department must approve or deny requests for emission reduction credit banking before they are effective. In the case of approvals, The Department issues a permit to the owner or operator defining the terms of such banking. The Department insures the permanence and enforceability of the banked emission reductions by including appropriate conditions in permits and, if necessary, by recommending appropriate revisions to the State Implementation Plan.

(f) The Department provides for the allocation of emission reduction credits in accordance with the uses specified by the holder of the emission reduction credits. The holder of ERCs must notify the Department in writing when they are transferred to a new owner or site. Any use of emission reduction credits must be compatible with local comprehensive plans, statewide planning goals, and state laws and rules.

*State effective: 7/1/2001; EPA effective: 3/24/2003; 68 FR 2891*

**Oregon Department of Forestry**  
**CHAPTER 629**

**629-24-301 Maintenance of Productivity and Related Values**

Operations on forestland shall be planned and conducted in a manner which will provide adequate consideration to treatment of slash to protect residual stands of timber and reproduction to optimize conditions for regeneration of forest tree species, to maintain productivity of forest land, and maintain air and water quality and fish and wildlife habitat:

- (1) Reduce the volume of debris as much as practicable by such methods as:
  - (a) Well planned and supervised felling and bucking practices to minimize breakage;
  - (b) Increased utilization of wood fibre including, but not limited to, salvaging, pre-logging, and relogging when a market exists;
  - (c) Stage cutting when applicable, with successive cuts delayed until slash created by previous operations is reduced.
- (2) In these areas where slash treatment is necessary for protection or regeneration, the following methods may be used:
  - (a) Scattering of slash accumulations;
  - (b) Piling or windrowing of slash;
  - (c) Mechanized chopping, compaction, or burying of slash;
  - (d) Controlled burning;
  - (e) Provisions for additional protection from fire during the period of increased hazard. Protect fish habitat when establishing water sources.
- (3) Dispose of or disperse unstable slash accumulations around landings to prevent their entry into streams.
- (4) When treating competing vegetation, plan harvesting practices to break up or destroy such vegetation. When necessary, follow up with application of chemicals and/or by burning.
- (5) If burning is the means of slash or competitive vegetation treatment used, it should be accomplished in such ways and at such times that reproduction and residual timber, humus and soil surface are adequately protected.

(6)(a) No landowner or operator shall burn in a riparian area along a Class I water;

(b) When burning in riparian areas of influence, landowners and operators shall protect aquatic and wildlife habitat such as downed logs and snags.

(7) Whenever disposal of slashing is to be accomplished by burning, such burning shall be accomplished under such conditions of weather that will assure adequate maintenance of air quality. Burning shall be done In accordance with the rules of Oregon’s “Smoke Management Plan”.

*State effective: 8/1/1987; EPA effective: 12/31/2001; 66 FR 55105*

### **629-43-043 Smoke Management Plan**

(1) Objective: To prevent smoke resulting from burning on forest lands from being carried to or accumulating in designated areas (Exhibit 2) or other areas sensitive to smoke, and to provide maximum opportunity for essential forest land burning while minimizing emissions; to coordinate with other state smoke management programs; to conform with state and federal air quality and visibility requirements; to protect public health; and to encourage the reduction of emissions.

(2) Definitions:

(a) “Deep mixed layer” extends from the surface to 1,000 feet or more above the designated area ceiling.

(b) “Smoke drift away” occurs where projected smoke plume will not intersect a designated area boundary downwind from the fire.

(c) “Smoke drift toward” occurs when the projected smoke plume will intersect a designated area boundary downwind from the fire or when wind direction is indeterminate due to wind speed less than 5 mph at smoke vent height.

(d) “Smoke vent height” level, in the vicinity of the fire, at which the smoke ceases to rise and moves horizontally with the wind at that level.

(e) “Stable layer of air” a layer of air having a temperature lapse rate of less than dry adiabatic (approximately 5.5degrees F per 1,000 feet) thereby retarding upward mixing of smoke.

(f) “Tons available fuel” an estimate of the tons of fuel that will be consumed by fire at the given time and place.

(g) “Residual smoke” smoke produced after the initial fire has passed through the fuel.

(h) "Field administrator" forest officer or federal land administrator who has the direct responsibility for administering burning permits on a unit of forest land within the boundaries of an official fire district.

(i) "Restricted area" that area delineated in Exhibit 2 for which permits to burn on forest land are required year round, pursuant to rule 629-43-041.

(j) "Designated area" those areas delineated in Exhibit 2 as principal population centers.

(k) "Heavy use" unusual concentrations of people using forest land for recreational purposes during holidays and special events.

(l) "Major recreation area" areas of the state subjected to concentrations of people for recreational purposes.

(m) "State Forester" means the State Forester or delegated Department of Forestry employe representative.

(n) "Instructions" means the specific burn authorizations and weather discussions issued and disseminated as needed by the State Forester.

(o) "Smoke Management Plan" means the administrative rule approved by the State Forester and the Department of Environmental Quality and administered by the State Forester to control prescribed burning on forest lands.

(p) "Smoke Management Directive 1-4-1-601", as approved by the Department of Environmental Quality, is the Department of Forestry's operational guidance for administration of the Oregon Smoke Management Program.

(q) "Other Areas Sensitive to Smoke" are intended to consider specific recreation areas during periods of heavy use by the public such as coastal beaches on special holidays, federal mandatory Class I areas during peak summer use, and special events. All Oregon and Washington Class I areas shall be considered as areas sensitive to smoke during the visibility protection period, defined in the Oregon Visibility Protection Plan. OAR 340-20-047, Sec. 5.2.

(3) Control:

(a) The State Forester is responsible for the coordination and control of the Smoke Management Plan. The plan applies to the restricted area set forth in Exhibit 2 with full interagency cooperation with the U.S.D.A., Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service, Bureau of Indian Affairs, private forest landowners, and the Department of Environmental Quality. The smoke management plan, Department of Forestry Directive 1-4-1-601 and the Smoke Management Instructions (and authorized variances) issued pursuant to the plan, shall be strictly complied with.

(b) Certain "designated areas" are established in consultation with the Environmental Quality Commission. Exhibit 2 delineates designated areas and specified ceilings.

(c) During periods of heavy use, major recreation areas in the state shall be provided the same consideration as "designated areas". Other areas sensitive to smoke shall be provided the same consideration as designated areas.

(d) The Smoke Management Plan shall be operated in a manner consistent with the requirements of the Oregon Visibility Protection Plan for Class I areas (OAR 340·20-047, Sac. 5.2).

(4)Administration:

(a) The State Forester, in developing instructions, and each field administrator issuing burning permits under this plan shall manage the prescribed burning on forest land In connection with the management of other aspects" of the environment in order to maintain a satisfactory atmospheric environment in designated areas (Exhibit 2). likewise, this effort shall be applied in special situations where local conditions warrant and that are not defined as designated areas but nevertheless are sensitive to smoke. The development of instructions and accomplishment of burning will entail consideration of air quality conditions and weather forecasts (including burning forecasts and plans of the Department of Environmental Quality and the Washington Department of Natural Resources), acreages involved, amounts of material to be burned, evaluation of potential smoke column vent height, direction and speed of smoke drift, residual smoke, mixing characteristics of the atmosphere, and distance from the designated area of each burning operation.

(b) The State Forester and each field administrator shall evaluate down-wind conditions prior to implementation of burning plans. When the State Forester or a field administrator determines that visibility in a designated area, or other area sensitive to smoke Is already seriously reduced or would likely become so with additional burning, or upon notice from the State Forester through the Protection Division, or upon notice from the State Forester following consultation with the Department of Environmental Quality that air in the entire state or portion thereof is, or would likely to become adversely affected by smoke, the affected field administrator shall terminate burning. Upon termination, any burning already under way will be completed, residual burning will be mopped up as soon as practical, and no additional burning will be attempted until approval has been received from the State Forester.

(5) Reports: Field administrators shall report dally at such times and in such manner as required by the State Forester covering their daily burning operations. Any wildfire that has the potential for smoke input into a designated or smoke sensitive area shall be reported immediately to the State Forester's office. The State Forester shall report to the Department of Environmental Quality each day on a timely basis its forecast, planned and accomplished burning, and smoke intrusions.

(6) Key to Smoke Drift Restrictions:

(a) Smoke drift away from designated area: No specific acreage limitation will be placed on prescribed burning when smoke drift is away from designated area. Burning should be done to best accomplish maximum vent height and to minimize nuisance effect on any segment of the public.

(b) Smoke drift toward designated area:

(A) Smoke plume height below designated area ceiling. Includes smoke that for reasons of fire intensity, location, or weather, will remain below the designated area ceiling. Also included are fires that vent into layers of air regardless of elevation, that provide a downslope trajectory into a designated area:

(i) Upwind distance less than 10 miles outside designated areas. No new prescribed fires will be ignited.

(ii) Upwind distance 10-30 miles outside designated area boundary. Burning limited to 1,500 tons per 150,000 acres on any one day.

(iii) Upwind distances 30-60 miles outside designated area boundary. Burning limited to 3,000 tons per 150,000 acres on any one day.

(iv) Upwind distances more than 60 miles beyond designated area boundary. No acreage restriction unless otherwise advised by the Forester.

(B) Smoke will be mixed through the deep layer at the designated area. This section includes smoke that will be dispersed from the surface through a deep mixed layer when it reaches the designated area boundary:

(i) Upwind distance less than 10 miles from designated area boundary. Burning limited to 3,000 tons per 150,000 acres on any one day.

(ii) Upwind distance 10-30 miles from designated area boundary. Burning limited to 4,500 tons per 150,000 acres on any one day.

(iii) Upwind distances 30-60 miles outside designated area boundary. Burning limited to 9,000 tons per 150,000 acres on any one day.

(iv) Upwind distances more than 60 miles beyond designated area boundary. No acreage restriction unless otherwise advised by the Forester.

(C) Smoke above a stable layer over the designated area. Smoke in this group will remain above the designated area, separated from it by a stable layer of air:

(i) Upwind distance less than 10 miles outside designated area. Burning limited to 6,000 tons per 150,000 acres on any one day.

(ii) Upwind distance 10-30 miles outside designated area. Burning limited to 9,000 tons per 150,000 acres on any one day.

(iii) Upwind distances 30-60 miles outside designated area. Burning limited to 18,000 tons per 150,000 acres on any one day.

(iv) Upwind distances more than 60 miles beyond designated area boundary. No acreage restriction unless otherwise advised by the Forester.

(D) Smoke vented into precipitation cloud system. When smoke can be vented to a height above the cloud base from which precipitation is falling, there will be no restrictions to burning, unless otherwise advised by the Forester.

(c) Changing conditions: When changing weather conditions, adverse to the Smoke Management objective, occur during burning operations, aggressive mop-up shall be initiated as soon as practical and no additional burning shall be initiated.

(7) Analysis and Evaluation: The State Forester shall be responsible for the annual analysis and evaluation of burning operations under this plan. Copies of the summaries will be provided to all interested parties.

(8) The Department of Environmental Quality, in cooperation with the State Forester, federal land management agencies, and private forest landowners shall develop maximum annual and daily emission limits in accordance with federal PSD (Prevention of Significant Deterioration) regulations.

*State effective: 8/1/1987; EPA effective: 12/31/2001; 66 FR 55105*

**DEPARTMENT OF OREGON STATE POLICE  
OFFICE OF STATE FIRE MARSHALL - CHAPTER 837**

**837-110-0010 Field Preparation**

(1) Prior to burning, all fields shall be prepared by providing a barrier around the perimeter free of combustibles.

(2) The barrier shall prevent any fire spread and shall be prepared by using one or more of the following methods:

(a) Plowing or disking a 17-foot strip around the field perimeter; or

(b) Plowing or disking a 5-foot strip around the field perimeter and the removal of loose, combustible straw from a 12-foot strip immediately adjacent to the 5-foot strip; or

(c) Having a 17-foot strip of green cover crop or bare earth; or

(d) Retaining a least a 50 foot strip of green cover crop or bare earth in the immediately adjacent field(s) at the time of burning; or

(e) Other alternatives may be used with the specific written approval of the State Fire Marshal.

(3) The barrier need not be provided where the perimeter of the field lies adjacent to a field that meets the provision of this section.

*State effective: 2/7/1994; EPA effective: 12/31/2001; 66 FR 55105*

**837-110-0020 Firefighting Water Supplies**

(1) When burning acreage, the following firefighting vehicles shall be provided:

(a) Up to 50 acres - At least two water tank vehicles with a minimum of 1,000 gallon water capacity shall be on site;

(b) 50 to 200 acres - At least three water tank vehicles with a minimum of 1,500 gallon water capacity shall be on site;

(c) Over 200 acres - At least four water tank vehicles with a minimum of 3,000 gallon water capacity shall be on site.

(2) Refill Requirements: During actual firefighting operations the water requirements described in this section shall be maintained at or above 25 percent of the specified amount. Within the buffer zone described in OAR 837-110-0080, this requirement shall be raised to at least 50 percent.

*State effective: 2/7/1994; EPA effective: 12/31/2001; 66 FR 55105*

### **837-110-0030 Firefighting Equipment**

The person(s) responsible for the acreage to be burned shall use firefighting equipment that meets or exceeds the following standards:

(1) All water tank vehicles shall be equipped with a pump in working order with a pumping capability of 30 gallons per minute or more and capable of extinguishing a flame at a distance of at least 40 feet.

(2) All required firefighting vehicles shall be adequately staffed to assure proper operation. It is recommended that at least two employees who have received basic safety training be assigned to each firefighting vehicle.

(3) All water tanks shall be filled to 90 percent of their capacity prior to ignition of the field.

*State effective: 2/7/1994; EPA effective: 12/31/2001; 66 FR 55105*

### **837-110-0040 Ignition Criteria**

(1) To ensure an adequate, complete, and even burn over the entire field to be burned, a minimum of two drip torches, propane lighters, or other pressurized fuel torches shall be on the burn site at the time of ignition.

(2) Whenever possible ignition shall cause the edges of the field to burn first and the burn to continue toward the field's center.

*State effective: 2/7/1994; EPA effective: 12/31/2001; 66 FR 55105*

### **837-110-0050 Prohibited Use**

The use of pitch forks, harrows, or the dragging of burning tires to ignite the fire is prohibited.

*State effective: 2/7/1989; EPA effective: 12/31/2001; 66 FR 55105*

### **837-110-0060 Communication**

Radio communications shall be maintained between:

(1) All firefighting equipment utilized in the burning of the field(s).

(2) The crew at the burn site and a constantly manned base station or home that will receive a call for assistance and summon help from an appropriate emergency response agency.

*State effective: 2/7/1989; EPA effective: 12/31/2001; 66 FR 55105*

### **837-110-0070 Fire Safety Watch**

In addition to the firefighting equipment required by OAR 837-110-0020 and 837-110-0030, a continuous fire safety watch shall be provided. The fire safety watch:

- (1) Shall patrol the perimeter of the field during burning operations.
- (2) Shall begin prior to the ignition of the field and continue for at least 30 minutes after open flame ceases. However, the fire watch shall not leave until it is confirmed that the fire is completely out.
- (3) Shall consist of at least one firefighting vehicle having a water tank with at least a 200 gallon water capacity and which meets the requirements of OAR 837-110-0030 and 837-110-0060.
- (4) May allow a field to burn up to the edge of a secondary road as long as there is a fire watch at both ends of the road during the time that the burning is occurring, in order to assure driver safety and divert traffic if necessary.
- (5) May allow burning of a field along a secondary road with fire watches, only if there are no combustibles or brush between the edge of the field and the secondary road.

**NOTE:** For purposes of these rules, secondary roads are rural minor collector roads and local roads as defined by the Federal Highway Administration and the Oregon Department of Transportation and quoted herein: (a) Rural collector roads - Generally serve travel of primarily inter county rather than statewide importance and constitute those routes on which (regardless of traffic volume) predominant travel distances are shorter than on arterial routes. (b) Rural minor collector roads - Roads that collect traffic from local roads and bring all developed areas within a reasonable distance of a collector road, provide service to the remaining smaller communities, and link the locally important traffic generators with their rural hinterland. (c) Rural local roads - Roads that serve primarily to provide access to adjacent land and provide service to travel over relatively short distances as compared to collectors or other highway systems.

*State effective: 2/7/1994; EPA effective: 12/31/2001; 66 FR 55105*

### **837-110-0080 Fire Safety Buffer Zones**

A fire safety buffer zone shall parallel both sides of all highways and roadways within the scope and application of these rules. The buffer zone shall extend 1/2 mile in a perpendicular direction from the outer edge of each highway or roadway right-of-way. No field burning shall be allowed in fire safety buffer zones except as provided in sections (1) and (2) of this rule:

- (1) Interstate Highways west of the crest of the Cascade Range, south to the Douglas/Lane County lines:
  - (a) Field burning may be permitted in the fire safety buffer zone only where a 1/4 mile wide noncombustible ground surface is provided between the field to be burned *and* the nearest edge of the freeway right-of-way. Noncombustible ground surfaces shall meet the criteria described in section (3) of this rule;

(b) The 1/4 mile noncombustible ground surface shall extend 1/4 mile each direction beyond the permitted field boundaries parallel to the freeway right-of-way.

(2) Other Roadways:

(a) Field burning may be permitted in the fire safety buffer zone only where a 1/8 mile wide noncombustible ground surface is provided between the field to be burned and the nearest edge of the highway right-of-way. Noncombustible ground surfaces shall meet the criteria described in section (3) of this rule;

(b) The 118 mile noncombustible ground surface shall extend 1/8 mile in each direction beyond the permitted field boundaries parallel to the highway right-of-way;

(c) The designated roadways to which this section applies are:

(A) ORE 99 - The section from Junction City to Eugene;

(B) ORE 99E - The sections from Oregon City to Salem and from Albany to Junction City;

(C) ORE 99W - The entire section from Portland to Junction City;

(D) US 20 - The section from Philomath to Lebanon;

(E) ORE 22 - The section from ORE 18 to Mehama;

(F) US 26 - The section from ORE 47 interchange to Portland;

(G) ORE 34 - The section from Corvallis to Lebanon.

(3) Noncombustible ground surfaces mentioned in subsections

(1)(a) and (b) and (2)(a) and (b) of this rule may be provided by planting a noncombustible ground cover approved by the State Fire Marshal or by disking and plowing the surface. Other alternative methods may be recognized by the State Fire Marshal or designee.

(4) The Office of State Fire Marshal or designee with the concurrence of the Office of State *Fire* Marshal may grant specific written approval:

(a) Not to provide the extensions required by subsections(2)(a) and (b) of this rule, when natural barriers such as rivers or other noncombustible surfaces exists; or

(b) For the use of alternative methods to provide the noncombustible ground surfaces required by subsections (1)(a) and (b) and (2)(a) and (b) of this rule.

*State effective: 2/7/1994; EPA effective: 12/31/2001; 66 FR 55105*

### **837-110-0090 Ban on Burning**

All field burning shall be banned when any two of the following criteria are present:

- (1) Temperature of 95 degrees Fahrenheit or above;
- (2) Relative humidity of 30 percent or below;
- (3) Wind speed of 15 miles per hour or higher.

*State effective: 2/7/1994; EPA effective: 12/31/2001; 66 FR 55105*

## **PROPANING**

### **837-110-0110 Field Preparation**

(1) Prior to propaning, all fields shall be prepared by providing a bather around the perimeter free of combustible materials.

(2) The bather may be provided by green cover crop, bare earth, or other method(s) to prevent any fire spread, and shall be prepared by using one or more of the following methods:

- (a) Plowing or disking a 10-foot strip around the field perimeter; or
- (b) Plowing or disking a 5-foot strip around the field perimeter and removal of loose, combustible straw from a 12-foot strip immediately adjacent to the 5-foot strip; or
- (c) Retaining at least a 50-foot strip of green crop or bare earth in the immediately adjacent field(s) at the time of propaning; or
- (d) Having a 17-foot strip of green cover crop or bare earth; or
- (e) Other alternatives may be used with the specific written approval of the State Fire Marshal.

(3) The bather need not be provided where the perimeter of the field lies adjacent to a field that meets the provisions of this section.

*State effective: 2/7/1994; EPA effective: 12/31/2001; 66 FR 55105*

### **837-110-0120 Firefighting Water Supplies**

When propaning acreage, the following safety measures shall apply:

- (1) At least one firefighting water tank vehicle meeting the equipment requirements of OAR 837-110-0120 through 837-110-0140 and which has a minimum water tank capacity of 200 gallons shall be on site.

(2) If additional firefighting assistance is more than five minutes from a burn site within a fire safety buffer zone, or ten minutes otherwise, then water tank capacity mentioned in section (1) of this rule shall be raised to 500 gallons.

(3) A means to refill the tanks mentioned in sections (1) and (2) of this rule shall be provided within a ten minute turn around time.

EXCEPTION: Water tank vehicles of smaller capacity may be used provided the total gallonage capacity complies with the above.

*State effective: 2/7/1994; EPA effective: 12/31/2001; 66 FR 55105*

### **837-110-0130 Firefighting Equipment**

The person(s) responsible for the acreage to be propaned shall use firefighting equipment that meets or exceeds the following standards:

(1) All water tank vehicles shall be equipped with a pump in working order with a pumping capability of 30 gallons per minute or more and capable of extinguishing a flame at a distance of at least 40 feet.

(2) All required water tank vehicles shall be adequately staffed to assure proper operation. It is recommended that at least two employees who have received basic safety training be assigned to each firefighting vehicle.

(3) All water tanks shall be filled to 90 percent of their capacity prior to ignition of the field.

*State effective: 2/7/1994; EPA effective: 12/31/2001; 66 FR 55105*

### **837-110-0140 Communication**

Radio communications shall be maintained:

(1) Between all firefighting equipment utilized in the propaning of the field(s);

(2) Between the crew at the propane site and a constantly manned base station or home that will receive a call for assistance and summon help from an appropriate emergency response agency.

*State effective: 2/7/1989; EPA effective: 12/31/2001; 66 FR 55105*

### **837-110-0150 Fire Safety Watch**

A fire watch:

(1) Shall begin following the propaning of the field and continue for at least 30 minutes after completion. However, the fire watch shall not leave until it is confirmed that the fire and all smoke sources are completely out.

(2) Shall consist of at least one firefighting vehicle with at least a 200 gallon water tank which is manned and equipped as stipulated in OAR 837-110-0020, 837-110-0030, and 837-110-0060.

(3) May allow a field to burn up to the edge of a secondary road as long as there is a fire watch at both ends of the road during the time that the burning is occurring, in order to assure driver safety or divert traffic if necessary.

(4) May allow burning of a field along a secondary road with fire watches, only if there are no combustibles or brush between the edge of the field and the secondary road.

NOTE: For purposes of these rules, secondary roads are rural minor collector roads and local roads as defined by the Federal highway Administration and the Oregon Department of Transportation and quoted herein:

-1-Rural collector roads - Generally serve travel of primarily inter county rather than statewide importance and constitute those routes on which (regardless of traffic volume) predominant travel distances are shorter than on arterial routes.

-2-Rural minor collector roads - Roads that collect traffic from local roads and bring all developed areas within a reasonable distance of a collector road, provide service to the remaining smaller communities, and link the locally important traffic generators with their rural hinterland.

-3-Rural local roads - Roads that serve primarily to provide access to adjacent land and provide service to travel over relatively short distances as compared to collectors or other highway systems.

*State effective: 2/7/1994; EPA effective: 12/31/2001; 66 FR 55105*

### **837-110-0160 Ban on Burning**

All propane shall be banned when any two of the following criteria are present

(1) Temperature of 95 degrees Fahrenheit or above.

(2) Relative humidity of 25 percent or below.

(3) Wind speed of 20 miles per hour or higher.

*State effective: 8/11/1993; EPA effective: 12/31/2001; 66 FR 55105*