

ADMINISTRATIVE RULES

(ii) The amount of the credit is the sum of payments and loans listed in OAR 330-090-0140(2)(c)(A)(i) for ECMs that were installed and inspected.

Stat. Auth.: ORS 469.040 & 469.165
Stats. Implemented: ORS 469.185 - 469.225
Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08

330-090-0150

Budget Limits and Payments for BETC

(1) Amount of Credits Allowed for a Facility:

(a) During any calendar year, a BETC preliminary certification will not be issued for more than:

(A) \$20 million in maximum eligible facility costs for a renewable energy resource facility renewable energy resource equipment manufacturing facility or high efficiency combined heat and power facility;

(B) \$10 million in maximum eligible facility costs for any other facility, not including homebuilder-installed renewable energy facility and high performance home Business Energy Tax Credits subject to subsection (b).

(b) A final certification for a Business Energy Tax Credit will not be issued for more than 50 percent of the cost not to exceed \$9,000 for a homebuilder-installed renewable energy facility or \$12,000 if the facility also constitutes a high performance home.

(2) Return of Review Charge for Returned Incomplete Applications: If under OAR 330-090-0130, ODOE does not accept and returns an incomplete application for preliminary certification, ODOE will also return the review charge submitted by the applicant.

(3) Cost of Reviews: ORS 469.217 requires applicants to pay all costs for the review of their applications. In order to meet this statutory requirement ODOE has established the following schedule for payments to accompany an application.

(a) Included with each application for preliminary certification must be a payment payable to ODOE, except for facilities qualifying under OAR 330-090-0130(2), for which a charge must be paid with the application for final certification. For all facilities except Sustainable Building Facilities or qualifying under OAR 330-090-0130(2), the payment will be 0.0060 multiplied by the facility eligible cost requested in the preliminary certification application, or a request to amend a preliminary certification, or \$30 whichever is greater. The maximum payment amount is \$35,000. The 0.0060 payment rate up to \$35,000 will be applied to all facilities with eligible costs of \$1 million and more that were received on or after January 1, 2007. For facilities with eligible costs of less than \$1 million, the 0.0060 payment rate up to \$35,000 will be applied to applications received on or after December 1, 2007. For Sustainable Building Facilities, the payment will be 0.0035 multiplied by the eligible cost calculated as required under these rules and as reported in the preliminary certification application, or a request to amend a preliminary certification. For facilities that qualify under OAR 330-090-0130(2), the payment will be 0.0035 multiplied by the eligible cost as requested in the final certification application.

(b) A refund of 75 percent of this payment may be granted up to 730 days (2 years) from the date the preliminary certification was approved by ODOE. Under no circumstances will an amount over 75 percent be refunded. Only refunds that are \$10 or greater will be issued. Amounts under \$10 will not be refunded. Conditions for which a refund may be granted are:

(A) Denial of an application for preliminary certification or for facilities that qualify under OAR 330-090-0130(2) of final certification; or

(B) Denial of a portion of costs requested in an application for preliminary certification or for facilities that qualify under OAR 330-090-0130(2) of final certification; or,

(C) A request to amend a preliminary certification resulting in decreased eligible costs. A refund will not be granted for any costs that are included in a pending certification.

(c) If a request to amend a preliminary certification results in facility re-certification with increased eligible cost then additional application payments will be paid for the additional cost as specified in (2)(a) of this rule.

(d) No facilities will be exempt from these requirements including applications for BETC pass-through under OAR 330-090-0140.

(e) The payment is a required part of a completed preliminary certification application per OAR 330-090-0130(4)(j), except for facilities that qualify under OAR 330-090-0130(2). Preliminary certifications will only be issued if the application is complete.

(f) In addition, the applicant may be required to pay for costs incurred in connection with the application that exceed these payments and which

the Director of ODOE determines are incurred solely in connection with processing the application. The applicant will be advised of any additional costs the applicant must pay before the costs are incurred.

Stat. Auth.: ORS 469.040 & 469.165
Stats. Implemented: ORS 469.185 - 469.225
Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08

Department of Environmental Quality Chapter 340

Rule Caption: Clarification of Proposed Orders in Contested Enforcement Cases.

Adm. Order No.: DEQ 5-2008

Filed with Sec. of State: 3-20-2008

Certified to be Effective: 3-20-08

Notice Publication Date: 6-1-2007

Rules Adopted: 340-011-0009, 340-011-0573

Rules Amended: 340-011-0005, 340-011-0510, 340-011-0515, 340-011-0575, 340-200-0040

Subject: Adopt OAR 340-011-0573 and amend OAR 340-011-0575 to allow any party to a DEQ contested case proceeding to file a motion requesting that the Administrative Law Judge (ALJ) revise the proposed order so as to provide a more clear and complete record on appeal to the Environmental Quality Commission (EQC).

Amend OAR 340-011-0510 to clarify that Environmental Law Specialists may provide lay representation on behalf of the DEQ in contested case proceedings involving license, permit, or certification revocations, modifications, and denials.

Correct a typographical error in OAR 340-011-0515 to reference the proper rule in the Oregon Administrative Procedures Act regarding the extent to which parties may be represented by attorneys or other authorized representatives in proceedings before ALJs or the EQC.

Adopt OAR 340-011-0009 and amend OAR 340-011-0005(5) to update the incorporation of portions of the Attorney General's Model Rules and incorporate the Attorney General's Model Rules for Miscellaneous and Orders in Other than Contested Cases.

Amend OAR 340-200-0040(2) to reflect the date that the rules are adopted by the EQC. This amendment is required because these amendments, if adopted, will be submitted to the U.S. Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP), which is a requirement of the Clean Air Act.

Rules Coordinator: Larry McAllister—(503) 229-6412

340-011-0005

Definitions

Unless otherwise defined in this division, the words and phrases used in this division have the same meaning given them in ORS 183.310, the rules of the Office of Administrative Hearings, the Model Rules or other divisions in Oregon Administrative Rules, Chapter 340, as context requires.

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

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

(3) "Director" means the director of the department or the director's authorized delegates.

(4) "Rules of the Office of Administrative Hearings" means the Attorney General's Rules, OAR 137-003-0501 through 137-003-0700.

(5) "Model Rules" or "Uniform Rules" means the Attorney General's Uniform and Model Rules of Procedure, OAR chapter 137, division 001 (excluding OAR 137-001-0008 through 137-001-0009), OAR chapter 137, division 003, and OAR chapter 137, division 004, as in effect on January 1, 2006.

(6) "Participant" means the respondent, a person granted either party or limited party status in the contested case under OAR 137-003-0535, an agency participating in the contested case under OAR 137-003-0540, and the department.

(7) "Respondent" means the person to whom a formal enforcement action is issued.

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(8) "Formal Enforcement Action" has the same meaning as defined in OAR 340, division 012.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.341

Hist.: DEQ 69(Temp), f. & cert. ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & cert. ef. 9-13-76; DEQ 25-1979, f. & cert. ef. 7-5-79; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 10-1997, f. & cert. ef. 6-10-97; DEQ 3-1998, f. & cert. ef. 3-9-98; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 10-2002, f. & cert. ef. 10-8-02; DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08

340-011-0009

Incorporation of Attorney General's Uniform and Model Rules

The following Attorney General's Uniform and Model Rules of Procedure are adopted and incorporated into this Division, except as otherwise provided in this Chapter: OAR chapter 137, division 001 (excluding OAR 137-001-0008 through 137-001-0009), OAR chapter 137, division 003, and OAR chapter 137, division 004, as in effect on January 1, 2006.

Stat. Auth.: ORS 468.020, 183.341, 183.452

Stats. Implemented: ORS 468A.020, 468.070, 468.090 - 0140, 183.341, 183.452

Hist.: DEQ 5-2008, f. & cert. ef. 3-20-08

340-011-0510

Agency Representation by Environmental Law Specialist

(1) Environmental Law Specialists, and other department personnel as approved by the director, are authorized to appear on behalf of the department and commission in contested case hearings involving formal enforcement actions issued under OAR 340, division 012, and revocation, modification, or denial of licenses, permits, and certifications.

(2) Environmental Law Specialists or other approved personnel may not present legal argument as defined under OAR 137-003-0545 on behalf of the department or commission in contested case hearings.

(3) When the department determines it is necessary to consult with the Attorney General's office, an administrative law judge will provide a reasonable period of time for an agency representative to consult with the Attorney General's office and to obtain either written or oral legal argument, if necessary.

Stat. Auth.: ORS 183.341, 183.452 & 468.020

Stats. Implemented: ORS 183.452

Hist.: DEQ 16-1991, f. & cert. ef. 9-30-91; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0103 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08

340-011-0515

Authorized Representative of Respondent other than a Natural Person in a Contested Case Hearing

A corporation, partnership, limited liability company, unincorporated association, trust and government body may be represented by either an attorney or an authorized representative in a contested case hearing before an administrative law judge or the commission to the extent allowed by OAR 137-003-0555.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.452

Hist.: DEQ 6-2002(Temp), f. & cert. ef. 4-24-02, thru 10-21-02; DEQ 10-2002, f. & cert. ef. 10-8-02; Renumbered from 340-011-0106 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08

340-011-0573

Proposed Orders in Contested Cases

(1) Following the close of the record for a contested case hearing, the administrative law judge will issue a proposed order. The administrative law judge will serve the proposed order on each participant. A proposed contested case order must conform to the requirements of OAR 137-003-0645(3).

(2) Within 15 days after a proposed contested case order is issued, a participant in the contested case hearing may file a motion requesting that the administrative law judge clarify or supplement a proposed order. The motion must specify why the participant believes that the proposed order fails to conform to the requirements of OAR 137-003-0645(3) and recommend changes to the order. The motion must be served on the administrative law judge and all participants in the contested case hearing.

(3) The administrative law judge may grant or deny a motion filed under section (2) of this rule within 15 days. If the motion is granted, the administrative law judge may take the matter under advisement and reissue the proposed order unchanged or may issue an amended proposed order. If the administrative law judge fails to act on the motion within 15 days, the motion is deemed denied by operation of law.

(4) The filing of a timely motion for clarification under section (2) of this rule tolls the period for filing a Petition for Commission Review of the

proposed contested case order under OAR 340-011-0575. Tolling of the period begins on the day the motion is served on the administrative law judge and ends on the day the motion is denied, deemed denied by operation of law, or the proposed order is reissued without changes. If the administrative law judge issues an amended proposed order, the amended order will be treated as a new proposed order for purpose of the filing a timely Petition for Commission Review under OAR 340-011-0575.

(5) The motion for clarification authorized by this rule is intended to alter the provisions of OAR 137-003-0655 but not to eliminate the authority of the administrative law judge to correct a proposed order in the manner specified in section (2) of that rule.

(6) A motion for clarification and any response to a motion for clarification will be part of the record on appeal.

Stat. Auth.: ORS 468.020, 183.341, 183.452

Stats. Implemented: ORS 468A.020, 468.070, 468.090 - 0140, 183.341, 183.452

Hist.: DEQ 5-2008, f. & cert. ef. 3-20-08

340-011-0575

Review of Proposed Orders in Contested Cases

(1) For purposes of this rule, filing means receipt in the office of the director or other office of the department.

(2) Commencement of Review by the Commission: The proposed order will become final unless a participant or a member of the commission files, with the commission, a Petition for Commission Review within 30 days of service of the proposed order. The timely filing of a Petition is a jurisdictional requirement and cannot be waived. Any participant may file a petition whether or not another participant has filed a petition.

(3) Contents of the Petition for Commission Review. A petition must be in writing and need only state the participant's or a commissioner's intent that the commission review the proposed order. Each petition and subsequent brief must be captioned to indicate the participant filing the document and the type of document (for example: Respondents Exceptions and Brief; Department's Answer to Respondent's Exceptions and Brief).

(4) Procedures on Review:

(a) Exceptions and Brief: Within 30 days from the filing of a petition, the participant(s) filing the petition must file written exceptions and brief. The exceptions must specify those findings and conclusions objected to, and also include proposed alternative findings of fact, conclusions of law, and order with specific references to the parts of the record upon which the participant relies. The brief must include the arguments supporting these alternative findings of fact, conclusions of law and order. Failure to take an exception to a finding or conclusion in the brief, waives the participant's ability to later raise that exception.

(b) Answering Brief: Each participant, except for the participant(s) filing that exceptions and brief, will have 30 days from the date of filing of the exceptions and brief under subsection (5)(a), in which to file an answering brief.

(c) Reply Brief: If an answering brief is filed, the participant(s) who filed a petition will have 20 days from the date of filing of the answering brief under subsection (5)(b), in which to file a reply brief.

(d) Briefing on Commission Invoked Review: When one or more members of the commission wish to review the proposed order, and no participant has timely filed a Petition, the chair of the commission will promptly notify the participants of the issue that the commission desires the participants to brief. The participants must limit their briefs to those issues. The chair of the commission will also establish the schedule for filing of briefs. When the commission wishes to review the proposed order and a participant also requested review, briefing will follow the schedule set forth in subsections (a), (b), and (c) of this section.

(e) Extensions: The commission or director may extend any of the time limits contained in section (5) of this rule. Each extension request must be in writing and filed with the commission before the expiration of the time limit. Any request for an extension may be granted or denied in whole or in part.

(f) Dismissal: The commission may dismiss any petition, upon motion of any participant or on its own motion, if the participant(s) seeking review fails to timely file the exceptions or brief required under subsection (5)(a) of this rule. A motion to dismiss made by a participant must be filed within 45 days after the filing of the Petition. At the time of dismissal, the commission will also enter a final order upholding the proposed order.

(g) Oral Argument: Following the expiration of the time allowed the participants to present exceptions and briefs, the matter will be scheduled for oral argument before the commission.

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(5) Additional Evidence: A request to present additional evidence must be submitted by motion and must be accompanied by a statement showing good cause for the failure to present the evidence to the administrative law judge. The motion must accompany the brief filed under subsection (5)(a) or (b) of this rule. If the commission grants the motion or decides on its own motion that additional evidence is necessary, the matter will be remanded to an administrative law judge for further proceedings.

(6) Scope of Review: The commission may substitute its judgment for that of the administrative law judge in making any particular finding of fact, conclusion of law, or order except as limited by OAR 137-003-0655 and 137-003-0665.

(7) Service of documents on other participants: All documents required to be filed with the commission under this rule must also be served upon each participant in the contested case hearing. Service can be completed by personal service, certified mail or regular mail.

Stat. Auth.: ORS 183.341 & 468.020
Stats. Implemented: ORS 183.460, 183.464 & 183.470
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 115, f. & ef. 7-6-76; DEQ 25-1979, f. & ef. 7-5-79; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0132 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08

340-200-0040

State of Oregon Clean Air Act Implementation Plan

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

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval. The State Implementation Plan was last modified by the Commission on October 17, 2007.

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

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

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

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

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.035
Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-f1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000 f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. &

cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 5-2008, f. & cert. ef. 3-20-08

Department of Fish and Wildlife Chapter 635

Rule Caption: Deschutes and Hood River Spring Chinook Sport Fisheries.

Adm. Order No.: DFW 26-2008(Temp)

Filed with Sec. of State: 3-17-2008

Certified to be Effective: 4-15-08 thru 7-31-08

Notice Publication Date:

Rules Amended: 635-018-0090

Subject: Amend rule to allow the sport harvest of adipose fin-clipped chinook salmon in the Deschutes and Hood rivers beginning April 15, 2008.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-018-0090

Inclusions and Modifications

(1) The **2008 Oregon Sport Fishing Regulations** provide requirements for the Central Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2008 Oregon Sport Fishing Regulations**.

(2) The Deschutes River from the mouth at the I-84 Bridge upstream to Sherars Falls is open to angling for trout, steelhead and adipose fin clipped Chinook salmon from April 15, 2008 to July 31, 2008.

(a) The catch limit is one adult adipose fin clipped salmon per day and five adipose fin clipped jack salmon per day.

(b) All non-adipose fin clipped Chinook salmon must be released unharmed.

(c) It is *unlawful* to continue to angle between Sherars Falls and the upper railroad trestle (three miles) after taking a daily bag limit of 1 adult Chinook salmon.

(3) The Hood River from the mouth to Powerdale Dam is open to angling for adipose fin-clipped Chinook salmon from April 15 through June 30, 2008.

(a) The catch limit for Chinook salmon is two adipose fin-clipped adults and five adipose fin-clipped jacks per day. All salmon that have not been adipose fin-clipped must be released unharmed.

(b) All other catch limits and restrictions remain unchanged from those listed for Hood River in the **2008 Oregon Sport Fishing Regulations**.

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

Stat. Auth.: ORS 496.138 & 496.146
Stats. Implemented: ORS 496.162
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 20-1994(Temp), f. & cert. ef. 4-11-94; FWC 24-1994(Temp), f. 4-29-94, cert. ef. 4-30-94; FWC 34-1994(Temp), f. 6-14-94, cert. ef. 6-16-94; FWC 54-1994, f. 8-25-94, cert. ef. 9-1-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 67-1994(Temp), f. & cert. ef. 9-26-94; FWC 70-1994, f. 10-4-95, cert. ef. 11-1-94; FWC 18-1995, f. 3-2-95, cert. ef. 4-1-95; FWC 60-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 11-1996(Temp), f. 3-8-96, cert. ef. 4-1-96; FWC 32-1996(Temp), f. 6-7-96, cert. ef. 6-16-96; FWC 38-1996(Temp), f. 6-14-96, cert. ef. 7-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 20-1997, f. & cert. ef. 3-24-97; FWC 21-1997, f. & cert. ef. 4-1-97; FWC 27-1997(Temp), f. 5-2-97, cert. ef. 5-9-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; DFW 56-1998(Temp), f. 7-24-98, cert. ef. 8-1-98 thru 10-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 12-2000(Temp), f. 3-20-00, cert. ef. 4-15-00 thru 7-31-00; DFW 27-2000(Temp), f. 5-15-00, cert. ef. 8-1-00 thru 10-31-00; DFW 28-2000, f. 5-23-00, cert. ef. 5-24-00 thru 7-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 13-2001(Temp), f. 3-12-01, cert. ef. 4-7-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 44-2001(Temp), f. 5-25-01, cert. ef. 6-1-01 thru 7-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 23-2002(Temp), f. 3-21-02, cert. ef. 4-6-02 thru 7-31-02; DFW 25-2002(Temp), f. 3-22-02, cert. ef. 4-6-02 thru 7-31-02; DFW 26-2003(Temp), f. & cert. ef. 3-21-02; DFW 62-2002, f. 6-14-02, cert. ef. 7-11-02; DFW 74-2002(Temp), f. 7-18-02, cert. ef. 8-1-02 thru 10-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 97-2002(Temp), f. & cert. ef. 8-29-02 thru 10-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 26-2003(Temp), f. 3-28-03, cert. ef. 4-15-03 thru 7-31-03; DFW 66-2003(Temp), f. 7-17-03, cert. ef. 8-1-03 thru 10-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04; DFW 77-2004(Temp), f. 7-28-04, cert. ef. 8-1-04 thru 10-31-04, Administrative correction 11-22-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 19-2005(Temp), f. 3-16-05, cert. ef. 4-15-05 thru 7-31-05; DFW 41-2005(Temp), f. 5-13-05, cert. ef. 5-15-05 thru 7-31-05; DFW 83-