


Date: July 23, 2010

To: Environmental Quality Commission

From: Dick Pedersen, Director 

Subject: Agenda item K, Rule adoption: Willamette Valley field burning rule revisions August 18-19, 2010 EQC meeting

Why this is important This proposed rulemaking implements 2009 legislation to reduce the practice of open field burning in the Willamette Valley and establish new rules for emergency field burning and for critical non-burn areas.

DEQ recommendation and EQC motion The Department of Environmental Quality recommends that the Environmental Quality Commission adopt the revisions to Division 266 Field Burning Rules (Willamette Valley) as presented in attachment A-1, as a revision to the Oregon State Implementation Plan.

Background and need for rulemaking The burning of grass seed and cereal grain fields in the Willamette Valley is a summertime practice to dispose of leftover straw after harvest, to control weeds, insects and plant diseases in order to maintain grass seed purity, reduce pesticide and herbicide use and improve yield. This practice produces smoke and fine particulate matter that can cause health problems, depending on the level and duration of exposure. The elderly, children and people with pre-existing respiratory conditions are at greatest risk from inhalation of this smoke.

This proposed rulemaking implements Senate Bill 528, adopted by the 2009 Oregon Legislature, which affects field burning as follows:

- Eliminates regular field burning in the Willamette Valley, starting in 2010. Prior to the bill, the limit was 40,000 acres per year.
- Reduces burning of “identified species”¹ and fields on “steep terrain” from 25,000 acres to 15,000 acres per year. These fields are located almost entirely in Marion County, in the northeastern part of the Willamette Valley. Prohibits burning in Benton, Lane, and most of Linn County.
- Allows up to 2,000 acres per year of “emergency burning” to address major disease outbreaks or insect infestations. Requires a finding of “extreme

¹ “Identified species” means a grass seed field consisting of Creeping Red Fescue, Chewings Fescue or Highland Bentgrass, or as identified by the director of the Oregon Department of Agriculture.

hardship” by the commission.

- Gives EQC the option to adopt rules to prohibit burning in “critical non-burn areas” that may include, but are not limited to, areas under industrial power transmission lines.
- Limits stack burning and propane flaming to 1,000 and 500 acres per year, respectively, until 2013, and then none after that.
- Doubles the fees associated with all remaining field burning.

Both EQC and the Oregon Department of Agriculture must revise administrative rules on field burning to adopt these changes. Under state law, EQC is required to enter into a memorandum of understanding with ODA to operate the Willamette Valley field burning program. Since 1995, ODA has handled all aspects of the operation and enforcement of the program.

At the Feb. 19, 2010 EQC meeting in Portland, DEQ provided the commission with an update on the key issues associated with this rulemaking. It was recognized that this rule should be designed to maximize protection to public health, while also being practical for a grower to use and efficient for DEQ and EQC to implement.

Effect of rule

If this proposed rulemaking is adopted, it would have the following effects:

1. Incorporate into DEQ rule the acreage limitations, prohibitions and fee increases in Senate Bill 528, as described above.
2. Based on Senate Bill 528, establish a new rule for “emergency burning” and the criteria and procedures for approval, delegate EQC authority to the DEQ director for approving emergency burning under this rule and require fees to cover administrative and smoke management related costs.
3. Based on Senate Bill 528, establish a new rule for “critical non-burn areas” in the Willamette Valley and define these areas as grass seed or cereal grain fields with 230 kilovolt or greater power transmission lines present, and fields within 500 feet of any school, airport, or hospital.
4. Change requirements for fire department training fires conducted on grass fields to align with existing statutes that allow firefighting training, providing it is for official training purposes and approval is first obtained from ODA, based on air quality considerations.
5. Clarify existing requirements that restrict or prohibit field burning in certain areas of the Willamette Valley, such as near cities, highways and airports.
6. Include a new rule that requires a burn fee for any field burning conducted outside the Willamette Valley. This fee is already required under existing state law, but it is not currently reflected in DEQ rules.
7. Propose miscellaneous changes to better align DEQ and ODA field burning rules.

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| Commission authority | The commission has authority to take this action under ORS 468.020 and ORS 468A.025. |
| Stakeholder involvement | In December 2009, DEQ convened a field burning advisory committee to provide comments on preliminary draft rule changes and discuss key issues associated with the proposed rulemaking. Committee members included grass seed growers, environmental groups, the Oregon Seed Council, OSU Crop Science, State Fire Marshal Office and Lane Regional Air Protection Agency. |
| Public comment | <p>DEQ held an initial public comment period April 1 to April 30, 2010, with two public hearings in Salem and Eugene. DEQ reopened the comment period between May 12 and May 21, 2010. DEQ received 200 individual comments. One letter was submitted on behalf of 104 persons, and another was submitted on behalf of 83 persons. As a result, DEQ received 387 comments.</p> <p>The majority of the comments focused on burning allowed on 15,000 acres of identified species/steep terrain in the northern portion of the Willamette Valley, and the 2,000 acres that could be approved for emergency burning anywhere in the Willamette Valley. The primary emphasis of these comments was the concern that the remaining field burning be managed so as not to pose a threat to public health. See the discussion in “Key Issues” for specific issues raised during the comment period.</p> <p>DEQ has summarized the comments and provided detailed responses in attachment B. A summary of the public hearings and testimony is in attachment C.</p> <p>In response to comments received during the public comment period, DEQ is proposing several additional changes. Attachment A-2 shows both the original proposed rule changes and additional substantive changes made by DEQ; the latter highlighted in the shaded text. The following is a brief summary of the additional changes, with rule citation and the page number in the rules where they can be found:</p> <ol style="list-style-type: none">1. Changing the policy statement in OAR 340-266-0020(1) to remove outdated language and replace with language that refers to the reduction in field burning and need to protect public health, pursuant to Senate Bill 528. Page 3.2. Changing the definition of “emergency open burning” in OAR 340-266-0030(12) to reflect the language in Senate Bill 528. Page 5.3. Adding a definition of “extreme hardship” to OAR 340-266-0030(13), in response to the lack of a definition of this term in Senate Bill 528, and to provide more clarity to DEQ’s emergency burning rule. Page 5.4. Adding to the emergency burning rule in OAR 340-266-0065(4)(b)(C) the term “crop rotation” as one of the alternatives to burning that must be evaluated by the grower when submitting a burn petition to DEQ. Page 20. |

5. Changing the emergency burning rule in OAR 340-266-0065(4)(b)(D) to require documentation from a third-party expert (extension agent, agronomist or consultant) to verify the severity of the disease outbreak or insect infestation. This was voluntary under the original proposed rule. This change will provide greater certainty that a severe disease outbreak or pest infestation exists, and shorten the time needed by DEQ to review burn petitions. Page 21.
6. Providing further clarification in the emergency burning rule in OAR 340-266-0065(4)(c) that the determination of extreme hardship must consider the total number of grass seed fields that are part of grower's farming operation, in order to show the extent of the financial impact from the disease outbreak. Page 21.
7. Adding to the emergency burning rule in OAR 340-266-0065(7)(c) that prior to approving any burn petitions, DEQ will post each field specific burn plan on its website for public review and comment for a period of seven days, and consider revising the burn plan based on the comments received. Page 22.
8. Providing further clarification to the critical non-burn area rules in OAR 340-266-0075(2)(a)(C) by defining when a school is not "in-session" so that a limited amount of field burning can be authorized within 500 feet. Also OAR 340-266-0075(2)(d) prohibits any burning upwind of the school, and requires the grower to verify no children are present on school grounds prior to burning. Page 28.
9. Adding to the critical non-burn area rules in OAR 340-266-0075(2)(e) that special precautions shall be taken by ODA smoke management staff when burning next to a school or hospital critical non-burn area to ensure that prevailing winds do not cause smoke impacts. Page 28.
10. Changing the training fire rules in OAR 340-266-0080(3) to add back a requirement that fire departments first obtain ODA approval when conducting training fires on grass seed fields, in order to ensure the burning occurs under appropriate weather conditions and does not cause air quality problems. Page 29.
11. Changing the definition of "wildfire" in OAR 340-266-0030(59) to include fires that are started by negligence or an intentional act, and changing the provisions in OAR 340-266-0040(9) to be consistent with this definition, related to actions taken by growers in response to wildfires. Page 10.

Key issues

The following are key issues related to the proposed rule changes. Please see attachment B for more details.

1. Emergency burning new rule

By setting a limit on emergency burning at 2,000 acres per year in Senate Bill 528, the Legislature intended to keep burning as an option for addressing major disease and insect outbreaks. However, there were many comments stating that the proposed emergency burning rule was not stringent enough, and did not meet the intent of Senate Bill 528. These comments focused specifically on the bill

language that requires emergency burning to be in response to an “extreme hardship,” and that the need to burn must “outweigh the dangers to public health and welfare.” There were concerns that extreme hardship was not defined in the rules, the criteria for determining extreme hardship were not stringent enough, and that the rule did not go far enough to ensure public health would be protected. Citing lack of stringency, there were also concerns the 2,000-acre limit for emergency burning would be routinely burned each year.

There were also comments from the Oregon Seed Council, Oregon Farm Bureau and several grass seed growers that the proposed rule was too stringent by placing too many restrictions on growers, and would deter them from applying for emergency burning. These comments supported making the rule simpler and less bureaucratic, so that growers could respond quickly to severe disease and insect problems.

In response to comments, DEQ made six changes to this rule section, as described in the section above. These changes included adding a definition of “extreme hardship” to provide more clarity to the rule, requiring third-party verification of a disease or insect outbreak by an extension agent or agronomist, and posting burn plans to solicit public comments prior to DEQ approving any emergency burning petition . The other three changes noted above also provided further clarification to the rule.

The proposed changes satisfy the intent of Senate Bill 528, are protective of human health and the environment and are practical and reasonable for growers. The key features of this rule, with the above changes included, can be summarized as follows:

- Growers may submit emergency burning petitions at two times during a year, which makes it easier for the grower to seek approval and have adequate opportunity for burning. Acreage allocation provisions in the rule will provide growers with equitable access to the 2,000-acre limit for emergency burning.
- The time for review and approval of petitions will be expedited by the delegation of authority from the EQC to the DEQ director, and the change to require third-party verification.
- Adding a definition of “extreme hardship” to the rule further clarifies that the approval of emergency burning takes into account both the severity of the agronomic and economic impact on a grower due to a disease outbreak or insect infestation, and helps clarify what documentation needs to be submitted.
- In addition to demonstrating an extreme hardship, a field specific burn plan must be developed and approved. The burn plan will be subjected to the most stringent smoke management controls. This will provide the maximum level of protection to public health from the smoke.
- As part of developing each burn plan, there will be an opportunity for the public to review and comment on each plan, and for DEQ to make improvements to

the plan before final approval.

There is the possibility that some burn petitions will not be approved, as some may not meet the criteria of extreme hardship, and others may not be approvable because of the constraints identified in the burn plan. Emergency burning approved in any field may only occur under the wind, weather conditions and other required criteria in the burn plan.

2. Critical non-burn areas new rule

Critical non-burn areas are allowed, but not required, under Senate Bill 528. In addition, the size of these areas is not defined, and only “power transmission lines” are cited in the bill. Comments supported and opposed the new provisions to establish 500-foot critical non-burn areas around schools, hospitals and airports. Based on a review of fields near schools, hospitals, and airports, DEQ estimates that 10 to 30 fields, all near schools, could be affected by this 500-foot critical non-burn area.

A. Size of critical non-burn areas

Many of the comments on the proposed 500-foot critical non-burn area cited the lack of scientific data to justify the size of this area, which DEQ acknowledges. The 500 feet was based DEQ and ODA smoke management experience in observing fire and smoke behavior, and meteorological knowledge about what is a reasonable distance to provide additional protection, in the event that unexpected wind turbulence causes smoke to drift toward these areas, even though the primary wind direction is away from these areas. Also, under ODA’s current field burning program, field burning near these sensitive areas is carefully managed, and the program has been effective in protecting these areas.

B. Additional protective measures added

DEQ added additional provisions for critical non-burn areas near schools and hospitals to ensure public health is protected. ODA may authorize a limited amount of field burning within 500 feet of a school that is not in-session under the proposed rules. DEQ defined the phrase “in-session” and added provisions that prevent any burning upwind of a school if within 500 feet and require the grower to verify there are no children or other persons present on the school grounds prior to burning.

C. Limiting critical non-burn areas to the Willamette Valley

Senate Bill 528 focused primarily on field burning in the Willamette Valley; however, under this statute EQC may be authorized to create critical non-burn areas in other parts of the state. DEQ’s proposed rules would establish critical non-burn areas only in the Willamette Valley. Neither DEQ nor ODA has the infrastructure or resources to regulate field burning outside the valley, as most of this burning is regulated at the county level. The original legislative discussion focused only on protecting power lines in the Willamette Valley, and there were no known areas in the state where other critical non-burn areas were needed. Should this change in the future, EQC could establish new critical non-burn areas

outside the Willamette Valley.

3. Revisions to training fires rule

Some comments opposed the removal of certain rule restrictions on fire departments' training fires on grass fields. This change was proposed to make DEQ rules more consistent with state laws regarding fire-fighter training. The leftover straw on grass fields can pose a fire hazard, and some rural fire departments believe it is important to have this training to respond to any wildfires. The proposed rule changes specify that any training fire conducted on a grass seed field must be consistent with state law and for official training purposes. Fire departments will be required to obtain ODA approval and use smoke management techniques for training fires on grass seed fields to prevent smoke impacts and air quality problems.

Next steps If approved, DEQ will submit the revised rules to EPA as a revision to the Oregon State Clean Air Act Implementation Plan.

Attachments

- A. Proposed rulemaking
 - 1. Proposed revisions to Division 266 – Field Burning Rules (Willamette Valley)
 - 2. Highlighted rule changes (in response to comments)
- B. Summary of public comments and agency response
- C. Hearing Officer's report on public hearings
- D. Relationship to Federal Requirements questions
- E. Statement of Need and Fiscal and Economic Impact
- F. Land Use Evaluation statement

Available upon request

- 1. Summary from the Dec. 15, 2009 field burning advisory committee meeting
- 2. DEQ Proposed Rulemaking Announcement
- 3. Legal Notice of Hearing
- 4. Written comments received
- 5. Proposed revisions to ODA Field Burning Division 603 Rules
- 6. Senate Bill 528 as adopted June 29, 2009
- 7. Rule Implementation Plan

Approved:

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DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 266

FIELD BURNING RULES (WILLAMETTE VALLEY)

340-266-0010

Introduction

(1) ~~Except for the fee in OAR 340-266-0140, T~~his 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 Multnomah, Washington, Clackamas, Marion, Polk, Yamhill, Linn, Benton and Lane Counties, herein referred to as the Willamette Valley. It also includes rules pertaining to fees for open field burning of perennial and annual grass seed crops in counties outside 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 ~~can be found~~ are established in OAR Chapter 603, Division 077 and 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 340-266-0065 establishes special provisions pertaining to "emergency open burning".

~~(fg)~~ 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;

(h) OAR 340-266-0075 establishes special provisions pertaining to areas where field burning is either prohibited or restricted.

(~~g~~i) OAR 340-266-0080 establishes special provisions pertaining to field burning by public agencies for official purposes, such as "training fires";

(~~h~~j) OAR 340-266-0090 establishes special provisions pertaining to "preparatory burning";

(~~i~~k) OAR 340-266-0100 establishes special provisions pertaining to open field burning for experimental purposes;

(~~j~~l) OAR 340-166-0110 establishes special provisions ~~and procedures~~ pertaining to emergency cessation of burning;

(~~k~~m) OAR 340-266-0120 establishes special provisions pertaining to propane flaming;

(~~l~~o) OAR 340-266-0130 establishes special provisions pertaining to "stack ~~and piling~~ burning".

(p) OAR 340-266-0140 contains a requirement for fees for open field burning in counties outside of the Willamette Valley.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.555

Hist.: DEQ 5-1984, f. & ef. 3-7-84; DEQ 12-1984, f. & ef. 7-13-84; DEQ 11-1987, f. & ef. 6-15-87; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0001

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 ~~allow provide~~ for a maximum level of field burning based on the limits specified in state law while protecting public health and welfare 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 837-110-01~~4005~~ through 837-110-01~~6055~~, the rules of the State Fire Marshal filed with the Secretary of State on ~~February 7, 1994~~ November 13, 2009. These rules shall apply to that area west of the Cascade Range and south to the Douglas/Lane County lines.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.555

Hist.: DEQ 5-1984, f. & ef. 3-7-84; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0003

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 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.~~

(2) "Burning Permit" or "Burn Permit" or "Permit" means a permit issued by the Department pursuant to ORS 468A.575.

(43) "Candidate Fields" means all grass seed or cereal grain fields being considered for open field burning or propane flaming.

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

(5) "Critical Non-Burn Area" means an area in a grass seed or cereal grain field where burning is prohibited, such as underneath power transmission lines, or near a school, airport, or hospital, pursuant to OAR 340-266-0075. This prohibition may be permanent or for a limited period of time, where provided in these rules.

(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, where it has been determined by ~~Provided~~ the Department ~~determines~~ that open field burning, propane flaming, or stack 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 1.8×10^{-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, The Department shall record~~ two hours of smoke intrusion ~~shall be recorded~~ for each hour the nephelometer hourly reading exceeds a background level by 5.0×10^{-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 4.0×10^{-4} b-scat units;~~

~~(c)~~ The background level shall be the average of the three hourly readings immediately prior to the intrusion.

(7) "Department" means the Oregon Department of Agriculture ~~Environmental Quality, except for OAR 340-266-0065, where this means the Department of Environmental Quality. Under ORS 468A.575, the Department of Environmental Quality~~ may enter into contracts with the Oregon Department of Agriculture or other agencies to carry out ~~the purposes set forth in~~ these rules to the extent permitted by law.

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

(9) "Director of Agriculture" means the Director of the Oregon Department of Agriculture.

~~(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: [Formula not included. See ED-NOTE.]~~

(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 field observation~~ or the calculated or estimated mixing height as determined by the Department, ~~whichever is greater~~.

(12) "Emergency Open Burning" means the open burning, propane flaming, or stack burning of a grass seed or cereal grain field infested with a disease or pest, where an extreme hardship exists due to a disease outbreak or insect infestation that outweighs the dangers to public health and safety from the burning, pursuant to the acreage limitation in OAR 340-266-0040, and the requirements in OAR 340-266-0065. Such burning shall be authorized by the Department as field-by-field burning, and utilize a field specific burn plan, to ensure the smoke does not endanger public health and safety to the greatest extent practicable.

(13) "Extreme Hardship due to disease outbreak or insect infestation" means a case-by-case finding related to the approval of emergency burning, based the severity of an agronomic and economic impact on a grower that is caused by a disease outbreak or insect infestation, as determined by the Department, pursuant to OAR 340-266-0065. Agronomic impact includes, but is not limited to, the risk of disease spread, the extent of damage to the grass stand, loss in seed yield, quality, or purity, need for stand replacement if no burning occurs, availability and feasibility of alternatives, and effectiveness of burning in eradicating the problem. Economic impact includes, but is not limited to, loss in market value of the harvested seed, total fields owned by the grower in relation to the infected field or fields, and cost of alternative treatments compared to the cost of burning."

~~(1214)~~ "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, emergency burning, and burning within priority areas.

~~(1315)~~ "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 Chewings Fescue~~) field registered on Line 2 of registration form number 1953 would be 1953-2-P-~~BLCF~~-35).

(16) "Field Specific Burn Plan" means an individual burn plan designed for a field or acreage that has been approved for emergency burning, which identifies specific criteria, conditions, precautions, and requirements that need to be followed when burning in order to ensure the smoke does not endanger public health and safety.

~~(1417)~~ "Fire District" or "District" or "Fire Protection District" means a fire permit issuing agency.

~~(1518)~~ "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.

~~(1619)~~ "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.~~

~~(1820)~~ "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.

~~(21) "Grower" means a person that cultivates perennial or annual grass seed or cereal grain.~~

~~(1922)~~ "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: ~~{Formula not included. See ED. NOTE.}~~

~~Grower Allocation = (Maximum annual acreage limit) x ((Total acreage registered by the grower registrant) / (Total acreage registered in the valley))~~

~~(2023)~~ "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.

~~(24) "Identified Species" means a grass seed field consisting of Creeping Red Fescue, Chewings Fescue, or Highland Bentgrass, or as identified by the Director of Agriculture.~~

~~(2125)~~ "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.

~~(2226)~~ "Marginal Day" means a day on which marginal conditions exist.

~~(2327)~~ "Nephelometer" means an instrument for measuring ambient smoke concentrations.

~~(2428)~~ "Northerly Winds" means winds coming from directions from ~~297~~0° to 90° in the north part of the compass, averaged through the effective mixing height.

~~(2529)~~ "Open Field Burning" means burning of any ~~perennial or annual~~ grass seed or cereal grain crops, or associated residue, including steep terrain and species identified by the Director of

~~Agriculture, or any "emergency" or "experimental" burning, as identified in these rules, 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.~~

(2730) "Open Field Burning Permit" means a permit issued by the Department pursuant to ORS 468A.575.

(31) "Permit Agent" means the person under contract or otherwise authorized by the Department to administer registration of acreage, issue burn permits, collect fees, and keep records for open field burning, propane flaming, or stack burning within their permit jurisdictions pursuant to ORS 468A.550 et seq.

(2832) "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.

(33) "Person" means, but is not limited to, individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, states and their agencies, and the Federal Government and its agencies.

(2934) "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.

(3035) "Priority Acreage" means acreage located within a priority area.

(3136) "Priority Areas" means ~~the following certain~~ areas ~~of~~in the Willamette Valley where burning is restricted, such as near population centers, airports, Interstate I-5, and other highways, as specified in OAR 340-266-0075(1).÷

~~(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.~~

(37) "Problem Field" means a field where special precautions need to be taken by the grower because of potential fire hazard or proximity to a sensitive area, as specified in OAR 340-266-0075(4).

~~(3238)~~ "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).

~~(3339)~~ "Propane Flaming" means the flame sanitization of a grass seed or cereal grain field using 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.

~~(3440)~~ "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.

~~(3541)~~ "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.

~~(3642)~~ "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. When using this method, little or no preparatory backfire burning shall be done.

~~(3743)~~ "Released Allocation" means that part of a grower's allocation, by registration form, that is unused and voluntarily released to the Department for first come-first serve dispersal to other grower registrants.

~~(3844)~~ "Residue" means straw, stubble, and screenings and associated crop material generated in the production of grass seed and cereal grain crops.

~~(3945)~~ "Responsible Person" means each person who is in ownership, control, or custody of the real property on which open field 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.

(46) "Screenings" means organic waste materials resulting from the seed cleaning process of grass seed and cereal grain.

~~(4047)~~ "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.

~~(4148)~~ "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.

~~(4249)~~ "Southerly Winds" means winds coming from directions from 90° to ~~297~~0° in the south part of the compass, averaged through the effective mixing height.

~~(4350)~~ "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.

~~(4451)~~ "Stack Burning Permit" means a permit issued by the Department pursuant to ORS 468A.575 that identifies the responsible person, date of permit issuance, and specifies the acreage and location authorized for stack-~~or pile~~ burning.

(52) "State Fire Marshal Fire Safety Buffer Zone" means an area within 1/4 mile of Interstate I-5, and 1/8 mile of major highways, that is required to have a noncombustible ground surface, as specified in OAR 340-266-0075, and as defined in the State Fire Marshal rules in OAR 837 Division 110.

(53) "Steep Terrain" means a grass seed or cereal grain field defined by Revised Universal Soil Loss Equation (RUSLE) and percent slope, as identified by the Director of Agriculture.

~~(4554)~~ "Test Fires" means individual field burns specifically authorized by the Department for the purpose of determining or monitoring atmospheric dispersion conditions.

~~(4655)~~ "Training Fires" means individual field burns set by or for a public agency for the official purpose of training personnel in fire-fighting techniques.

~~(4756)~~ "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.

~~(4857)~~ "Validation Number" is used interchangeably with "Burn Permit" and 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.

(4958) "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: ~~[Formula not included. See ED. NOTE.]~~

VI = (Effective mixing height (feet))/1,000 x (Average wind speed through the effective mixing height (knots))

(59) "Wildfire" means an uncontrollable fire started due to a breakdown of equipment, an accident caused by human error or negligence, or any other cause, including an intentional act.

(5060) "Willamette Valley" means, for the purposes of these rules, the areas of Benton, Clackamas, Lane, Linn, Marion, Mult-nomah, Polk, Washington, and Yamhill cCounties, 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.~~

[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.]

~~[ED. NOTE: Copies of the Formulas referenced in this rule are available from the agency.]~~

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.555

Hist.: DEQ 29, f. 6-12-71, ef. 7-12-71; DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. & ef. 6-4-76; DEQ 138, f. 6-30-77; DEQ 140(Temp), f. & ef. 7-27-77 thru 11-23-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 22-1978, f. & ef. 12-28-78; DEQ 24-1979(Temp), f. & ef. 7-5-79; DEQ 28-1979, f. & ef. 9-13-79; DEQ 30-1979, f. & ef. 9-27-79; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-89; DEQ 8-1989, f. & cert. ef. 6-7-89; DEQ 5-

1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0005

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). One 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 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 or other monitoring device approved by the Department, 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 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.~~

(108) 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.

(9) In the event of a “wildfire” and a grower is unable to comply with all of the requirements of this Division, the grower must:

(a) Immediately take action to stop, contain, and correct the problem.

(b) As soon as practicable notify the designated permit agent. If the permit agent is unavailable, the grower must contact the department.

(A) Notification must be by phone, fax, email, or in person, or other method as technology allows and is approved by the Department.

(B) If a grower is unable to contact his/her designated permit agent or the department, then a detailed message must be left with the Department and the permit agent explaining the problem, the solution, the field information, and grower information.

(110) 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.~~

(~~1311~~) 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).

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.555

Hist.: DEQ 29, f. 6-12-71, ef. 7-12-71; DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. 6-4-76; DEQ 138, f. 6-30-77; DEQ 140(Temp), f. & ef. 7-27-77 thru 11-23-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 22-1978, f. & ef. 12-28-78; DEQ 30-1979, f. & ef. 9-27-79; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-88; DEQ 8-1989, f. & cert. ef. 6-7-89; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0010

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. Each candidate field listed shall state if the field is located in a priority area, contains a critical nonburn area, is a problem field, or is being requested for emergency burning. Registration, listing of fields, and mapping shall be completed according to the established procedures of the Department. Fields to be registered for burning must be planted in crops that can be open burned or propane flamed in the same year they are registered, and must be owned or under the control of the

registrant. At the time of registration, a non-refundable registration fee of ~~\$24~~ shall be paid for each acre registered for open field burning and ~~\$12~~ 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 for stack burning will occur twice annually. Each grower intending to stack burn under this Division during the first stack burn period of February 5 through May 31, must register between January 2 through January 31.

(c) Each grower intending to stack burn under this Division during the second stack burn period of October 5 through December 31, must register between September 1 and September 30.

~~(bd)~~ 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 ~~\$12~~ 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;

~~(ee)~~ 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;

~~(ef)~~ 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;

~~(eg)~~ 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~~ designated 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~~designated 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~~designated 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~~16 per acre sanitized by open field burning;

(B) ~~\$24~~ 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) (C) \$10 per acre burned in stacks. 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 grower~~ by the Department pursuant to OAR 340-266-0060(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~~ designated 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 ORS 468A.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~~ returned to the Department no later than the first working day of the following week.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.615

Hist.: DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. 6-4-76; DEQ 138, f. & ef. 6-30-77; DEQ 140(Temp), f. & ef. 7-27-77 thru 11-23-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 2-1980, f. & ef. 1-21-80; DEQ

12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-89; DEQ 8-1989, f. & cert. ef. 6-7-89; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0012

340-266-0060

Acreage Limitations, Allocations

(1) Limitation of Acreage:

~~(a) Except for acreage and residue open field burned pursuant to OAR 340-266-0100 through 340-266-0130, the maximum acreage to be open field burned annually in the Willamette Valley under this Division shall not exceed 15,000 acres of steep terrain and "identified species" as defined in OAR 340-266-0030.~~

~~(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;~~

~~(b) Steep terrain and identified species burning is prohibited in Benton and Lane Counties, and in Linn County, except for portions of northeast Linn County that are east of the North Santiam River and north of Jefferson-Scio Drive and Robinson Drive to the west boundary of the city of Scio and north of Highway 226, and portions of northeast Linn County that are east of Richardson Gap Road and north of Fish Hatchery Drive.~~

~~(c) The Department may by order permit emergency open field burning, propane flaming, or stack burning of up to 2,000 acres annually, in addition to the limitations on acreage specified in this section. Requirements for emergency open burning are specified in OAR 340-266-0065.~~

~~(d) The maximum acreage to be propane flamed annually in the Willamette Valley under this Division shall not exceed 500 acres for the years 2009, 2010, 2011 and 2012. For the year 2013 and thereafter, all propane flaming is prohibited.~~

~~(e) The maximum acreage to be stack burned annually in the Willamette Valley under this Division shall not exceed 1000 acres for the years 2009, 2010, 2011 and 2012. For the year 2013 and thereafter all stack burning is prohibited.~~

~~(ef)~~ 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 OAR 340-266-0120.~~

(2) Allocation of Acreage:

(a) In the event that total open burning and propane flaming 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 ~~(dc)~~ 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 open burning and propane flaming registration as of April 1 exceeds the maximum acreage allowed to be open field burned or propane flamed annually, pursuant to subsection (1)(a) and (c) 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;~~

~~(dc)~~ 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.

(d) In the event that total stack burning registration at the close of the first registration period of January 2 through January 31 is less than or equal to the maximum of 250 acres out of the 1000 acre annual allocation pursuant to subsection (1)(e) of this rule, for the first stack burn period of February 5 through May 31, the Department shall sub-allocate to each grower registrant (subject to daily burn authorization) 100 percent of their respective registered acreage.

(e) In the event that total stack burning registration at the close of the first registration period of January 2 through January 31 exceeds the maximum of 250 acres out of the 1000 acre annual allocation pursuant to subsection (1)(e) of this rule, for the first stack burn period of February 5 through May 31, the Department may sub-allocate to each grower registrant on a pro rata basis not more than 100 percent of the maximum acreage limit, referred to as "grower allocation." If any acreage remains unburned at the end of this first stack burn period, this acreage will be added to the maximum acreage allowed to be burned during the second burn period pursuant to subsections (2)(f)(g).

(f) In the event that total stack burning registration at the close of the second registration period of September 1 through September 30 is less than or equal to the maximum of 750 acres allowed to be burned for the second stack burn period of October 5 through December 31 pursuant to subsection (1)(e) of this rule, the Department shall sub-allocate to each grower registrant (subject to daily burn authorization) 100 percent of their respective registered acreage.

(g) In the event that total stack burning registration at the close of the second registration period of September 1 through September 30 exceeds the maximum of 750 acres out of the 1000 acre annual allocation pursuant to subsection (1)(e) of this rule, for the second stack burn period of October 5 through December 31, the Department may sub-allocate to each grower registrant on a pro rata basis not more than 100 percent of the maximum acreage limit, referred to as "grower allocation."

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.610

Hist.: DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. & ef. 6-4-76; DEQ 138, f. & ef. 6-30-77; DEQ 140(Temp), f. & ef. 7-27-77 thru 11-23-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 22-1978, f. & ef. 12-28-78; DEQ 13-1979, f. & ef. 6-8-79; DEQ 30-1979, f. & ef. 9-27-79; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0013

340-266-0065

Emergency Open Burning

In accordance with ORS 468A.610(11)(a), the Department may by order allow up to 2,000 acres each calendar year for emergency open burning, propane flaming or stack burning to address a disease outbreak or insect infestation on a grass seed or cereal grain field. A grower seeking emergency burning authorization must submit a petition to the Department requesting emergency burning in accordance with the dates specified in subsection (9), and shall include the information as provided in this rule.

(1) Such burning shall be limited to the minimum number of acres on the field to address the emergency, and in no case exceed the acreage approved for burning by the Department under these rules.

(2) In addition to the general requirements for burning in OAR 340-266-0040, any emergency burning approved under these rules shall be subject to special field-by-field authorization by the Department of Agriculture, and a field specific smoke management burn plan required in subsection (6), to protect public health and safety.

(3) Emergency burning shall be subject to the requirements in OAR 340-266-0050, including the registration and burn fee.

(4) Based on the submittal dates specified in subsection (9), a grower seeking emergency burning approval shall submit a petition to the Department containing the following documentation:

(a) A field burning registration form, in accordance with OAR 340-266-0050(1).

(b) Severity of the disease outbreak or insect infestation, the minimum number of acres being requested for burning to address the problem, and the type of burning to be used (open burning, propane flaming, or stack burning).

(A) Documentation shall include seed testing results from the most recent seed harvest, obtained from an independent seed lab operated by a registered seed technologist (RST), which shows the seed quality and purity results from the infested field or acreage, and how this is evidence of a major disease outbreak or insect infestation. Emphasis should be given to seed germination testing results, and whether the germination percentage is more than 10 percent under the required percentage established for that specific grass variety. Growers are encouraged to submit seed testing results and reference the Seed Standards established by Oregon Seed Certification Service at Oregon State University, as part of this documentation.

(B) Other documentation besides seed testing results may be submitted by the grower providing it also shows evidence of a major disease outbreak or insect infestation.

(C) Description of the extent of damage to the grass stand, whether stand replacement would be needed if no burning is conducted, and the extent to which burning is expected to remedy the disease outbreak or insect infestation. This shall include whether any alternatives to burning, such as crop rotation or chemical treatments, would be similar to or more effective in eradicating the problem.

(D) For the information noted above in paragraphs (A), (B) and (C), growers are required to include documentation from an extension agent, agronomist, or consultant.

(c) Description of how the severity of the disease outbreak or insect infestation affects the market value of the harvested seed and the extent of the financial or economic hardship this poses. This description shall include an estimate of the overall financial loss from the outbreak or infestation, in relation to total number of grass seed fields that are part of grower's farming operation, as a means of showing the extent of the financial impact, which shall be considered in the determination of extreme hardship.

(d) A field specific smoke management burn plan, as described in subsection (6) below.

(5) After receiving a petition for emergency burning, the Department may request additional information from the grower petitioner, in accordance with the provisions and conditions listed in subsection (4).

(6) Included in the emergency burning petition shall be a field specific burn plan, containing the information listed below. The information in subsection (a) below shall be provided primarily by the grower petitioner, in consultation with the Department of Agriculture. The information in subsections (b) and (c) shall be determined primarily by the Department of Agriculture, in consultation with the grower petitioner.

(a) Location of the field, and description of the potential risk to the public, associated with the burning of the field. This includes:

(A) Whether any burning restrictions or prohibitions apply to the field, as identified in OAR 340-266-0075, related to priority areas, critical non-burn areas, fire safety buffer zones, or problem fields.

(B) Any other unique factors in addition to (A) above, such as neighboring homes or residential areas within a 1/4 mile of the field, or any special events, community activities, sporting events, etc., that should be avoided on certain dates, that can be reasonably known in advance.

(b) Optimum meteorological conditions for burning the field, related to information provided in subsection (a). This includes the appropriate surface and transport winds, humidity, mixing height, and ventilation conditions.

(c) Any special field preparation (such as fluffing), ignition techniques, need for preparatory burning, or other burning related precautions and instructions.

(7) In making a determination to approve a petition, based on the authority specified in subsection (10), the Department shall approve all, part, or none of the acres requested for emergency burning, based on the following:

(a) The information submitted under subsections (4)(b) and (c).

(b) Review of the field specific burn plan, required in subsection (6), and the extent of the constraints associated with burning the field and likelihood that the field can be burned with the risk to the public minimized to the greatest extent practicable.

(c) Prior to approving any emergency burning petition, the Department shall post the field specific burn plan, and a summary of the emergency burning petition, on DEQ's website for a period of 7 days. Interested persons will be notified by the Department prior to or on the day of the posting. Comments can be submitted to the Department on the proposed burn plan during the 7 day period. Any comments received will be considered by the Department prior to acting on the emergency burning petition.

(d) Whether emergency burning petitions submitted by the dates in subsection (9) exceeds the specific allocation listed. In the event the total acres requested for emergency burning exceeds these allocations, the petitions shall be prioritized on a case-by-case basis, as part of the approval process.

(e) After evaluating all the information received pursuant to this rule concerning an emergency burning petition, the Department shall make a finding of whether an extreme hardship due to disease outbreak or insect infestation exists, and if so, whether it outweighs the dangers to public health and safety from emergency open burning, in accordance with ORS 468A.610(11)(a).

(8) Authorization for burning shall be provided on the day of the burn by the Department of Agriculture, as described in subsection (2).

(9) Petitions for emergency burning can be submitted at two different time periods during the year. The first is between March 1 and June 1. The second is between July 1 and September 1.

(a) Petitions submitted between March 1 and June 1 shall include the documentation specified in subsection (4), based primarily on evidence of a disease outbreak or insect infestation from the prior year seed harvest, and any other more recent evidence if available. These petitions shall also include an estimate of the affect on the upcoming seed harvest. These petitions will be limited to a 1,000 acre allocation, out of the annual 2,000 acre limit for emergency burning. After reviewing all petitions received by June 1, the Department shall notify each grower petitioner whether all, part, or none of the acres requested for emergency burning were approved.

(b) Petitions submitted between July 1 and September 1 shall include the documentation specified in subsection (4), based primarily on evidence of a disease outbreak or insect infestation from the most recent seed harvest. Prior year seed harvest information may be included, as well as other more recent evidence if available. These petitions shall be limited to a 1,000 acre allocation, out of the annual 2,000 acre limit for emergency burning. If any of the prior allocation in subsection (a) remains, it will be carried over to this allocation. Petitions submitted during this time period will receive an allocation on a first-come first-serve basis. However, petitions approved prior to August 15 will only allow a maximum of 200 acres per petition. After August 15, this limit will not apply, and the remainder of the allocation will be available on a first-come first-serve basis, providing any of the allocation remains. For each petition submitted during this time period, the Department shall notify each grower petitioner whether all, part, or none of the acres requested for emergency burning were approved.

(c) Any petitions not approved in subsection (a) due to limited allocation can be resubmitted on July 1 to be eligible to that allocation, subject to the same first-come-first serve allocation method.

(10) The Commission delegates to the Director the authority to permit emergency burning by order pursuant to and by the standards contained in ORS 468A.610(11)(a).

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

Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468A.610
Hist.: DEQ

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, or other communication technology method as approved by the Department, and 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 for areas where burning is restricted or prohibited, as specified in OAR 340-266-0075.~~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;~~

Should smoke intrusions occur in the Eugene-Springfield area from the burning of identified species, steep terrain, propane flaming, or stack burning, pursuant to OAR 340-266-0060, that are in excess of the cumulative hours identified below, the minimum allowable effective mixing height for any additional open field burning for remainder of the year shall be as follows:

| <u>Cumulative Hours in the Eugene-Springfield Area</u> | <u>Minimum Effective Mixing Height (feet)</u> |
|--|---|
| <u>0-14 hours</u> | <u>No minimum</u> |
| <u>15-19 hours</u> | <u>4,000</u> |
| <u>20-24 hours</u> | <u>4,500</u> |
| <u>25 and greater</u> | <u>5,500</u> |

~~(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; The effective mixing height restrictions in paragraph (a) of this subsection shall not apply to emergency burning or experimental burning, pursuant to OAR 340-266-0065 and OAR 340-266-0100.~~

~~(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.

[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.]

~~[ED. NOTE: The Table referenced in this rule is available from the agency.]~~

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.590

Hist.: DEQ 29, f. 6-12-71, ef. 7-12-71; DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. & ef. 6-4-76; DEQ 138, f. 6-30-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 22-1978, f. & ef. 12-28-78; DEQ 24-1979(Temp), f. & ef. 7-5-79; DEQ 28-1979, f. & ef. 9-13-79; DEQ 30-1979, f. & ef. 9-27-79; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-89; DEQ 8-1989, f. & cert. ef. 6-7-89; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0015

340-266-0075

Burning Restrictions and Prohibitions.

The following identifies smoke management requirements for Priority Areas, Critical Non-Burn Areas, Fire Marshal Buffer Zones, and Problem Fields, where burning is either restricted or prohibited, in order to further protect public health and safety from smoke impacts and potential fire hazards:

(1) Priority Areas:

(a) The following are priority areas where open field burning, propane flaming, and stack burning are restricted by the Department. No priority area acreage shall be burned upwind of any city, airport, Interstate freeway or highway within the same priority area. Any burning within a priority area is subject to field-by-field authorization by the Department.

(A) Within three miles of the city limits of incorporated cities having populations of 10,000 or greater;

(B) Within three miles of the city limits of the City of Lebanon;

(C) Within one mile of airports servicing regularly scheduled airline flights;

(D) Areas on the west and east side of and within 1/2 mile of Interstate I-5, from Portland to the Douglas/Lane County lines;

(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.

(b) Parts of the Interstate I-5 and highway priority areas identified above are subject to the State Fire Marshal rules for fire safety buffer zones, which require a noncombustible area be established. See subsection (3) of these rules.

(c) Each responsible person open field burning, propane flaming, or stack burning within a priority area shall refrain from burning and promptly extinguish any burning if it is likely that the resulting smoke would noticeably affect the priority area.

(2) Critical Non-Burn Areas:

(a) Burning is prohibited in critical non-burn areas. No person shall cause or allow any open field burning, propane flaming, or stack burning in the following critical non-burn areas:

(A) Any part of a field that is underneath a power transmission line of 230kV rating or greater, extending 75 feet on either side of the center line of the power transmission line.

(B) Any part of a field within 500 feet of a hospital.

(C) Any part of a field within 500 feet of a school, when the school is in-session. A school shall be considered not in-session during the following time periods:

(i) During the regular summer closure period, ending 7 days prior to the first day of regular fall classes. The Department will determine the end of the regular summer closure period by reviewing each affected schools regularly published school-year calendar;

(ii) 2 hours after the time the school day is officially over. The official end of the school day will be determined by the Department as published in each affected schools regular school-day calendar.

(D) Any part of a field within 500 feet of any airport servicing regularly scheduled airline flights. In cases where an airport does not have regularly scheduled flights, field by field burning may be authorized by the Department, in accordance with the requirements in subsection (4) that apply to problem fields.

(b) It shall be the responsibility of the grower to ensure the critical non-burn area does not burn. It is recommended that the field stubble either be flail-chopped, mowed, or otherwise cut close to the ground, and the loose straw removed so that the field will not sustain an open fire. Application of water to the critical non-burn area to ensure there is no combustion is also recommended. Should any open fire occur, all flame and smoke sources shall be immediately and actively extinguished.

(c) Each responsible person conducting open field burning, propane flaming, or stack burning adjacent to a critical non-burn area shall take appropriate steps to ensure that the critical nonburn area remains unburned.

(d) Field by field burning may be authorized by the Department within 500 feet of a school that is not in-session, subject to the following restrictions:

(A) No burning is allowed upwind of the school;

(B) The responsible person burning the field makes a visual observation to first confirm that there are no children or other persons present on the school grounds.

(e) When burning next to a school or hospital critical non-burn area, or beyond 500 feet of a school that is not in-session, the Department shall take special precautions to ensure that prevailing winds do not cause smoke to impact the school or hospital.

(f) Any field that is intersected by a power transmission line of 230kV rating or greater shall be registered and burned as two separate fields, to minimize the potential of smoke to come into direct contact with the power transmission line.

(3) State Fire Marshal Safety Buffer Zones:

(a) State Fire Marshal Rules for fire safety buffer zones, as specified in OAR 837, Division 110, establish a 1/2 mile buffer zone for Interstate I-5 and the highways listed below in this subsection. No person shall cause or allow any open field burning, propane flaming, or stack burning in the following portions of the State Fire Marshal fire safety buffer zones:

(A) Within 1/4 mile of either side of Interstate I-5, from Portland to the Douglas/Lane County lines.

(B) Within 1/8 mile of either side of the designated roadways listed below, as specified in the State Fire Marshal Rules in OAR 837, Division 110:

(i) ORE 99 - The section from Junction City to Eugene;

(ii) ORE 99E - The sections from Oregon City to Salem and from Albany to Junction City;

(iii) ORE 99W - The entire section from Portland to Junction City;

(iv) US 20 - The section from Philomath to Lebanon;

(v) ORE 22 - The section from ORE 18 to Mehama;

(vi) US 26 - The section from ORE 47 interchange to Portland;

(vii) ORE 34 - The section from Corvallis to Lebanon.

(b) The 1/4 and 1/8 mile safety buffer zone distances identified above must be a noncombustible area, as defined in the State Fire Marshal Rules. For all requirements related to the State Fire Marshal Fire Safety Buffer Zones, see OAR 837, Division 110. Nothing in the Departments' rules regarding fire safety buffer zones replaces or substitutes for meeting all the requirements in the State Fire Marshal Rules.

(c) The area beyond the 1/4 and 1/8 mile noncombustible area in the fire safety buffer zone represents the area that is considered a priority area as described above in subsection (1)(a)(D) and (E). Burning in this part of the fire safety buffer zone is subject to the restrictions for priority areas in subsection (1) of these rules.

(4) Problem Fields:

(a) No problem fields shall be burned without first contacting the Department to determine what specific weather conditions and smoke management criteria need to be followed when burning the field, in order protect any school, hospital, airport, or other sensitive area, in proximity to the field.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.610

Hist.: DEQ

340-266-0080

Burning by Public Agencies (Training Fires)

In order to promote public safety through the training of firefighting personnel, ~~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 a fire department or rural fire protection district is 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 fire authority having jurisdiction, and must be conducted in a manner consistent with the primary its purpose of providing training to firefighting personnel, in accordance with ORS 468A.020.

(2) Such burning must be limited to the minimum number of acres and occasions reasonably needed to ensure adequate fire fighting personnel training, 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.

(3) Consultation with the Department of Agriculture by the fire department or rural fire protection district is required, in order to identify the appropriate atmospheric dispersion and burning conditions for optimum smoke dispersal, to protect the public from smoke impacts.

(4) No training fires shall be allowed on any acreage that is in a State Fire Marshal safety buffer zone, and any training fire being considered in a critical non-burn area, Priority Area, or Problem Field, shall comply with the requirements in subsection (3) of these rules.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.020

Hist.: DEQ 5-1984, f. & ef. 3-7-84; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 4-1993, f. & cert. ef. 5-11-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0031

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.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.600

Hist.: DEQ 11-1987, f. & ef. 6-15-87; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0033

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 con-siderations 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 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.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.620

Hist.: DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0035

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.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.610

Hist.: DEQ 5-1984, f. & ef. 3-7-84; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0040

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 OAR 340-266-0050;

(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 837-110-0155;

(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.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.600

Hist.: DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-89; DEQ 8-1989, f. & cert. ef. 6-7-89; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0045

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 registered and 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.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.600

Hist.: DEQ 11-1987, f. & ef. 6-15-88; DEQ 8-1989, f. & cert. ef. 6-7-89; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0055.

340-266-0140

Burning Fees Outside Willamette Valley

In accordance with ORS 468A.615(1)(b), each person open field burning perennial or annual grass seed crops in counties outside the Willamette Valley, shall pay the Department \$8.00 for each acre burned.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.615

Hist.: DEQ

Note: All revisions to the proposed rules are indicated in redline/strikeout. Substantive changes in response to public comments are highlighted in the **shaded** text.

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 266

FIELD BURNING RULES (WILLAMETTE VALLEY)

340-266-0010

Introduction

(1) ~~Except for the fee in OAR 340-266-0140, 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 Multnomah, Washington, Clackamas, Marion, Polk, Yamhill, Linn, Benton and Lane Counties, herein referred to as the Willamette Valley. It also includes rules pertaining to fees for open field burning of perennial and annual grass seed crops in counties outside 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 ~~can be found~~ are established in OAR Chapter 603, Division 077 and 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 340-266-0065 establishes special provisions pertaining to “emergency open burning”.

(~~fg~~) 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;

(h) OAR 340-266-0075 establishes special provisions pertaining to areas where field burning is either prohibited or restricted.

(~~gi~~) OAR 340-266-0080 establishes special provisions pertaining to field burning by public agencies for official purposes, such as "training fires";

(~~hj~~) OAR 340-266-0090 establishes special provisions pertaining to "preparatory burning";

(~~ik~~) OAR 340-266-0100 establishes special provisions pertaining to open field burning for experimental purposes;

(~~jl~~) OAR 340-166-0110 establishes special provisions ~~and procedures~~ pertaining to emergency cessation of burning;

(~~km~~) OAR 340-266-0120 establishes special provisions pertaining to propane flaming;

(~~lo~~) OAR 340-266-0130 establishes special provisions pertaining to "stack ~~and piling~~ burning".

(p) OAR 340-266-0140 contains a requirement for fees for open field burning in counties outside of the Willamette Valley.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.555

Hist.: DEQ 5-1984, f. & ef. 3-7-84; DEQ 12-1984, f. & ef. 7-13-84; DEQ 11-1987, f. & ef. 6-15-87; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0001

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 ~~allow~~ **provide for a maximum level of field burning based on the limits specified in state law while protecting public health and welfare 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 837-110-01~~4005~~ through 837-110-01~~6055~~, the rules of the State Fire Marshal filed with the Secretary of State on ~~November 13, 2009~~ February 7, 1994. These rules shall apply to that area west of the Cascade Range and south to the Douglas/Lane County lines.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.555

Hist.: DEQ 5-1984, f. & ef. 3-7-84; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0003

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 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.~~

(2) "Burning Permit" or "Burn Permit" or "Permit" means a permit issued by the Department pursuant to ORS 468A.575.

~~(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.

(5) "Critical Non-Burn Area" means an area in a grass seed or cereal grain field where burning is prohibited, such as underneath power transmission lines, or near a school, airport, or hospital, pursuant to OAR 340-266-0075. This prohibition may be permanent or for a limited period of time, where provided in these rules.

(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, where it has been determined by. ~~Provided~~ the Department ~~determines~~ that open field burning, propane flaming, or stack 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 1.8×10^{-4} b-scat units or more but less than the applicable value in subsection (b) ~~or (e)~~ of this section;

(b) ~~Between June 16 and September 14 of each year, The Department shall record~~ two hours of smoke intrusion ~~shall be recorded~~ for each hour the nephelometer hourly reading exceeds a background level by 5.0×10^{-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 4.0×10^{-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 Oregon Department of Agriculture Environmental Quality, except for OAR 340-266-0065, where this means the Department of Environmental Quality. Under ORS 468A.575, the Department of Environmental Quality may enter into contracts with the Oregon Department of Agriculture or other agencies to carry out ~~the purposes set forth in~~ these rules to the extent permitted by law.

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

(9) "Director of Agriculture" means the Director of the Oregon Department of Agriculture.

~~(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: [Formula not included. See ED-NOTE.]~~

(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 field observation~~ or the calculated or estimated mixing height as determined by the Department, ~~whichever is greater~~.

(12) "Emergency Open Burning" means the open burning, propane flaming, or stack burning of a grass seed or cereal grain field infested with a disease or pest, where an extreme hardship exists due to a disease outbreak or insect infestation that outweighs the dangers to public health and safety from the burning, pursuant to the acreage limitation in OAR 340-266-0040, and the requirements in OAR 340-266-0065. Such burning shall be authorized by the Department as field-by-field burning, and utilize a field specific burn plan, to ensure the smoke does not endanger public health and safety to the greatest extent practicable.

(13) "Extreme Hardship due to disease outbreak or insect infestation" means a case-by-case finding related to the approval of emergency burning, based the severity of an agronomic and economic impact on a grower that is caused by a disease outbreak or insect infestation, as determined by the Department, pursuant to OAR 340-266-0065. Agronomic impact includes, but is not limited to, the risk of disease spread, the extent of damage to the grass stand, loss in seed yield, quality, or purity, need for stand replacement if no burning occurs, availability and feasibility of alternatives, and effectiveness of burning in eradicating the problem. Economic impact includes, but is not limited to, loss in market value of the harvested seed, total fields owned by the grower in relation to the infected field or fields, and cost of alternative treatments compared to the cost of burning."

~~(1214)~~ "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, emergency burning, and burning within priority areas.

~~(1315)~~ "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 (bluegrassChewings Fescue) field registered on Line 2 of registration form number 1953 would be 1953-2-P-BLCF-35).

(16) "Field Specific Burn Plan" means an individual burn plan designed for a field or acreage that has been approved for emergency burning, which identifies specific criteria, conditions, precautions, and requirements that need to be followed when burning in order to ensure the smoke does not endanger public health and safety.

~~(1417)~~ "Fire District" or "District" or "Fire Protection District" means a fire permit issuing agency.

~~(1518)~~ "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.

~~(1619)~~ "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.~~

~~(1820)~~ "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.

(21) "Grower" means a person that cultivates perennial or annual grass seed or cereal grain.

~~(1922)~~ "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: ~~{Formula not included. See ED. NOTE.}~~

Grower Allocation = (Maximum annual acreage limit) x ((Total acreage registered by the grower registrant) / (Total acreage registered in the valley))

~~(2023)~~ "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.

(24) "Identified Species" means a grass seed field consisting of Creeping Red Fescue, Chewings Fescue, or Highland Bentgrass, or as identified by the Director of Agriculture.

~~(2125)~~ "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.

~~(2226)~~ "Marginal Day" means a day on which marginal conditions exist.

~~(2327)~~ "Nephelometer" means an instrument for measuring ambient smoke concentrations.

~~(2428)~~ "Northerly Winds" means winds coming from directions from ~~29~~70° to 90° in the north part of the compass, averaged through the effective mixing height.

~~(2529)~~ "Open Field Burning" means burning of any ~~perennial or annual~~ grass seed or cereal grain crops, or associated residue, including steep terrain and species identified by the Director of Agriculture, or any "emergency" or "experimental" burning, as identified in these rules.~~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.

~~(2730)~~ "Open Field Burning Permit" means a permit issued by the Department pursuant to ORS 468A.575.

~~(31)~~ "Permit Agent" means the person under contract or otherwise authorized by the Department to administer registration of acreage, issue burn permits, collect fees, and keep records for open field burning, propane flaming, or stack burning within their permit jurisdictions pursuant to ORS 468A.550 et seq.

~~(2832)~~ "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.

~~(33)~~ "Person" means, but is not limited to, individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, states and their agencies, and the Federal Government and its agencies.

~~(2934)~~ "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.

~~(3035)~~ "Priority Acreage" means acreage located within a priority area.

~~(3136)~~ "Priority Areas" means the following certain areas ofin the Willamette Valley where burning is restricted, such as near population centers, airports, Interstate I-5, and other highways, as specified in OAR 340-266-0075(1):

~~(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.~~

(37) "Problem Field" means a field where special precautions need to be taken by the grower because of potential fire hazard or proximity to a sensitive area, as specified in OAR 340-266-0075(4).

~~(3238)~~ "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).

~~(3339)~~ "Propane Flaming" means the flame sanitization of a grass seed or cereal grain field using 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.

~~(3440)~~ "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.

~~(3541)~~ "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.

~~(3642)~~ "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. When using this method, little or no preparatory backfire burning shall be done.

~~(3743)~~ "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.

~~(3844)~~ "Residue" means straw, stubble, ~~and~~ screenings and associated crop material generated in the production of grass seed and cereal grain crops.

~~(3945)~~ "Responsible Person" means each person who is in ownership, control, or custody of the real property on which open field 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.

(46) "Screenings" means organic waste materials resulting from the seed cleaning process of grass seed and cereal grain.

~~(4047)~~ "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.

~~(4148)~~ "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.

~~(4249)~~ "Southerly Winds" means winds coming from directions from 90° to ~~29~~70° in the south part of the compass, averaged through the effective mixing height.

~~(4350)~~ "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.

~~(4451)~~ "Stack Burning Permit" means a permit issued by the Department pursuant to ORS 468A.575 that identifies the responsible person, date of permit issuance, and specifies the acreage and location authorized for stack-~~or pile~~ burning.

(52) "State Fire Marshal Fire Safety Buffer Zone" means an area within 1/4 mile of Interstate I-5, and 1/8 mile of major highways, that is required to have a noncombustible ground surface, as specified in OAR 340-266-0075, and as defined in the State Fire Marshal rules in OAR 837 Division 110.

(53) "Steep Terrain" means a grass seed or cereal grain field defined by Revised Universal Soil Loss Equation (RUSLE) and percent slope, as identified by the Director of Agriculture.

~~(4554)~~ "Test Fires" means individual field burns specifically authorized by the Department for the purpose of determining or monitoring atmospheric dispersion conditions.

~~(4655)~~ "Training Fires" means individual field burns set by or for a public agency for the official purpose of training personnel in fire-fighting techniques.

~~(4756)~~ "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.

(4857) "Validation Number" is used interchangeably with "Burn Permit" and 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.

(4958) "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: ~~[Formula not included. See ED. NOTE.]~~

VI = (Effective mixing height (feet))/1,000 x (Average wind speed through the effective mixing height (knots))

(59) "Wildfire" means an uncontrollable fire started due to a breakdown of equipment, an accident caused by human error or negligence, or any other cause, including an intentional act.

(5060) "Willamette Valley" means, for the purposes of these rules, the areas of Benton, Clackamas, Lane, Linn, Marion, Mult-nomah, Polk, Washington, and Yamhill cCounties, 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.

[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.]

~~[ED. NOTE: Copies of the Formulas referenced in this rule are available from the agency.]~~

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.555

Hist.: DEQ 29, f. 6-12-71, ef. 7-12-71; DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. & ef. 6-4-76; DEQ 138, f. 6-30-77; DEQ 140(Temp), f. & ef. 7-27-77 thru 11-23-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 22-1978, f. & ef. 12-28-78; DEQ 24-1979(Temp), f. & ef. 7-5-79; DEQ 28-1979, f. & ef. 9-13-79; DEQ 30-1979, f. & ef. 9-27-79; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80;

DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-89; DEQ 8-1989, f. & cert. ef. 6-7-89; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0005

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). One 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 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 **or other monitoring device approved by the Department,** 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 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.~~

(108) 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.

(9) In the event of a “wildfire” and a grower is unable to comply with all of the requirements of this Division, the grower must:

(a) Immediately take action to stop, contain, and correct the problem.

(b) As soon as practicable notify the designated permit agent. If the permit agent is unavailable, the grower must contact the department.

(A) Notification must be by phone, fax, email, or in person, or other method as technology allows and is approved by the Department.

(B) If a grower is unable to contact his/her designated permit agent or the department, then a detailed message must be left with the Department and the permit agent explaining the problem, the solution, the field information, and grower information.

(110) 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.~~

(1311) 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).

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.555

Hist.: DEQ 29, f. 6-12-71, ef. 7-12-71; DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. 6-4-76; DEQ 138, f. 6-30-77; DEQ 140(Temp), f. & ef. 7-27-77 thru 11-23-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 22-1978, f. & ef. 12-28-78; DEQ 30-1979, f. & ef. 9-27-79; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-88; DEQ 8-1989, f. & cert. ef. 6-7-89; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0010

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. Each candidate field listed shall state if the field is located in a priority area, contains a critical nonburn area, is a problem field, or is being requested for emergency burning. Registration, listing of fields, and mapping shall be completed according to the established procedures of the

Department. Fields to be registered for burning must be planted in crops that can be open burned or propane flamed in the same year they are registered, and must be owned or under the control of the registrant. At the time of registration, a non-refundable registration fee of \$~~24~~ shall be paid for each acre registered for open field burning and \$~~12~~ 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 for stack burning will occur twice annually. Each grower intending to stack burn under this Division during the first stack burn period of February 5 through May 31, must register between January 2 through January 31.

(c) Each grower intending to stack burn under this Division during the second stack burn period of October 5 through December 31, must register between September 1 and September 30.

(~~bd~~) 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 \$~~12~~ 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;

(~~ee~~) 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;

(~~df~~) 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;

(~~eg~~) 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~~designated 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~~designated 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~~designated 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~~16 per acre sanitized by open field burning;

(B) ~~\$2~~4 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) (C) \$10 per acre burned in stacks. 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~~ grower by the Department pursuant to OAR 340-266-0060(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~~ designated 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 ORS 468A.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~~ returned to the Department no later than the first working day of the following week.

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

Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468A.615

Hist.: DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. 6-4-76; DEQ 138, f. & ef. 6-30-77; DEQ 140(Temp), f. & ef. 7-27-77 thru 11-23-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-89; DEQ 8-1989, f. & cert. ef. 6-7-89; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0012

340-266-0060 **Acreage Limitations, Allocations**

(1) Limitation of Acreage:

~~(a) Except for acreage and residue open field burned pursuant to OAR 340-266-0100 through 340-266-0130, the maximum acreage to be open field burned annually in the Willamette Valley under this Division shall not exceed 15,000 acres of steep terrain and “identified species” as defined in OAR 340-266-0030.:~~

~~(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;~~

~~(b) Steep terrain and identified species burning is prohibited in Benton and Lane Counties, and in Linn County, except for portions of northeast Linn County that are east of the North Santiam River and north of Jefferson-Scio Drive and Robinson Drive to the west boundary of the city of Scio and north of Highway 226, and portions of northeast Linn County that are east of Richardson Gap Road and north of Fish Hatchery Drive.~~

~~(c) The Department may by order permit emergency open field burning, propane flaming, or stack burning of up to 2,000 acres annually, in addition to the limitations on acreage specified in this section. Requirements for emergency open burning are specified in OAR 340-266-0065.~~

~~(d) The maximum acreage to be propane flamed annually in the Willamette Valley under this Division shall not exceed 500 acres for the years 2009, 2010, 2011 and 2012. For the year 2013 and thereafter, all propane flaming is prohibited.~~

(e) The maximum acreage to be stack burned annually in the Willamette Valley under this Division shall not exceed 1000 acres for the years 2009, 2010, 2011 and 2012. For the year 2013 and thereafter all stack burning is prohibited.

~~(ef) 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 OAR 340-266-0120.~~

(2) Allocation of Acreage:

(a) In the event that total open burning and propane flaming 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 ~~(dc)~~ 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 open burning and propane flaming registration as of April 1 exceeds the maximum acreage allowed to be open field burned or propane flamed annually, pursuant to subsection (1)(a) and (c) 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;~~

~~(dc)~~ 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.

(d) In the event that total stack burning registration at the close of the first registration period of January 2 through January 31 is less than or equal to the maximum of 250 acres out of the 1000 acre annual allocation pursuant to subsection (1)(e) of this rule, for the first stack burn period of February 5 through May 31, the Department shall sub-allocate to each grower registrant (subject to daily burn authorization) 100 percent of their respective registered acreage.

(e) In the event that total stack burning registration at the close of the first registration period of January 2 through January 31 exceeds the maximum of 250 acres out of the 1000 acre annual allocation pursuant to subsection (1)(e) of this rule, for the first stack burn period of February 5 through May 31, the Department may sub-allocate to each grower registrant on a pro rata basis not

more than 100 percent of the maximum acreage limit, referred to as “grower allocation.” If any acreage remains unburned at the end of this first stack burn period, this acreage will be added to the maximum acreage allowed to be burned during the second burn period pursuant to subsections (2)(f)(g).

(f) In the event that total stack burning registration at the close of the second registration period of September 1 through September 30 is less than or equal to the maximum of 750 acres allowed to be burned for the second stack burn period of October 5 through December 31 pursuant to subsection (1)(e) of this rule, the Department shall sub-allocate to each grower registrant (subject to daily burn authorization) 100 percent of their respective registered acreage.

(g) In the event that total stack burning registration at the close of the second registration period of September 1 through September 30 exceeds the maximum of 750 acres out of the 1000 acre annual allocation pursuant to subsection (1)(e) of this rule, for the second stack burn period of October 5 through December 31, the Department may sub-allocate to each grower registrant on a pro rata basis not more than 100 percent of the maximum acreage limit, referred to as “grower allocation.”

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.610

Hist.: DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. & ef. 6-4-76; DEQ 138, f. & ef. 6-30-77; DEQ 140(Temp), f. & ef. 7-27-77 thru 11-23-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 22-1978, f. & ef. 12-28-78; DEQ 13-1979, f. & ef. 6-8-79; DEQ 30-1979, f. & ef. 9-27-79; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0013

340-266-0065

Emergency Open Burning

In accordance with ORS 468A.610(11)(a), the Department may by order allow up to 2,000 acres each calendar year for emergency open burning, propane flaming or stack burning to address a disease outbreak or insect infestation on a grass seed or cereal grain field. A grower seeking emergency burning authorization must submit a petition to the Department requesting emergency burning in accordance with the dates specified in subsection (9), and shall include the information as provided in this rule.

(1) Such burning shall be limited to the minimum number of acres on the field to address the emergency, and in no case exceed the acreage approved for burning by the Department under these rules.

(2) In addition to the general requirements for burning in OAR 340-266-0040, any emergency burning approved under these rules shall be subject to special field-by-field authorization by the Department of Agriculture, and a field specific smoke management burn plan required in subsection (6), to protect public health and safety.

(3) Emergency burning shall be subject to the requirements in OAR 340-266-0050, including the registration and burn fee.

(4) Based on the submittal dates specified in subsection (9), a grower seeking emergency burning approval shall submit a petition to the Department containing the following documentation:

(a) A field burning registration form, in accordance with OAR 340-266-0050(1).

(b) Severity of the disease outbreak or insect infestation, the minimum number of acres being requested for burning to address the problem, and the type of burning to be used (open burning, propane flaming, or stack burning).

(A) Documentation shall include seed testing results from the most recent seed harvest, obtained from an independent seed lab operated by a registered seed technologist (RST), which shows the seed quality and purity results from the infested field or acreage, and how this is evidence of a major disease outbreak or insect infestation. Emphasis should be given to seed germination testing results, and whether the germination percentage is more than 10 percent under the required percentage established for that specific grass variety. Growers are encouraged to submit seed testing results and reference the Seed Standards established by Oregon Seed Certification Service at Oregon State University, as part of this documentation.

(B) Other documentation besides seed testing results may be submitted by the grower providing it also shows evidence of a major disease outbreak or insect infestation.

(C) Description of the extent of damage to the grass stand, whether stand replacement would be needed if no burning is conducted, and the extent to which burning is expected to remedy the disease outbreak or insect infestation. This shall include whether any alternatives to burning, such as **crop rotation or** chemical treatments, **would be similar to** or more effective in eradicating the problem.

(D) For the information noted above in paragraphs (A), (B) and (C), growers are **required to include** documentation from an extension agent, agronomist, or consultant.

(c) Description of how the severity of the disease outbreak or insect infestation affects the market value of the harvested seed and the extent of the financial or economic hardship this poses. This description shall include an estimate of the overall financial loss from the outbreak or infestation, in relation to total number of grass seed fields that are part of grower's farming operation, as a means of showing the extent of the financial impact, **which shall be considered in the determination of extreme hardship.**

(d) A field specific smoke management burn plan, as described in subsection (6) below.

(5) After receiving a petition for emergency burning, the Department may request additional information from the grower petitioner, in accordance with the provisions and conditions listed in subsection (4).

(6) Included in the emergency burning petition shall be a field specific burn plan, containing the information listed below. The information in subsection (a) below shall be provided primarily by the grower petitioner, in consultation with the Department of Agriculture. The information in subsections (b) and (c) shall be determined primarily by the Department of Agriculture, in consultation with the grower petitioner.

(a) Location of the field, and description of the potential risk to the public, associated with the burning of the field. This includes:

(A) Whether any burning restrictions or prohibitions apply to the field, as identified in OAR 340-266-0075, related to priority areas, critical non-burn areas, fire safety buffer zones, or problem fields.

(B) Any other unique factors in addition to (A) above, such as neighboring homes or residential areas within a 1/4 mile of the field, or any special events, community activities, sporting events, etc., that should be avoided on certain dates, that can be reasonably known in advance.

(b) Optimum meteorological conditions for burning the field, related to information provided in subsection (a). This includes the appropriate surface and transport winds, humidity, mixing height, and ventilation conditions.

(c) Any special field preparation (such as fluffing), ignition techniques, need for preparatory burning, or other burning related precautions and instructions.

(7) In making a determination to approve a petition, based on the authority specified in subsection (10), the Department shall approve all, part, or none of the acres requested for emergency burning, based on the following:

(a) The information submitted under subsections (4)(b) and (c).

(b) Review of the field specific burn plan, required in subsection (6), and the extent of the constraints associated with burning the field and likelihood that the field can be burned with the risk to the public minimized to the greatest extent practicable.

(c) Prior to approving any emergency burning petition, the Department shall post the field specific burn plan, and a summary of the emergency burning petition, on DEQ's website for a period of 7 days. Interested persons will be notified by the Department prior to or on the day of the posting. Comments can be submitted to the Department on the proposed burn plan during the 7 day period. Any comments received will be considered by the Department prior to acting on the emergency burning petition.

(d) Whether emergency burning petitions submitted by the dates in subsection (9) exceeds the specific allocation listed. In the event the total acres requested for emergency burning exceeds these allocations, the petitions shall be prioritized on a case-by-case basis, as part of the approval process.

(e) After evaluating all the information received pursuant to this rule concerning an emergency burning petition, the Department shall make a finding of whether an extreme hardship due to disease outbreak or insect infestation exists, and if so, whether it outweighs the dangers to public health and safety from emergency open burning, in accordance with ORS 468A.610(11)(a).

(8) Authorization for burning shall be provided on the day of the burn by the Department of Agriculture, as described in subsection (2).

(9) Petitions for emergency burning can be submitted at two different time periods during the year. The first is between March 1 and June 1. The second is between July 1 and September 1.

(a) Petitions submitted between March 1 and June 1 shall include the documentation specified in subsection (4), based primarily on evidence of a disease outbreak or insect infestation from the prior year seed harvest, and any other more recent evidence if available. These petitions shall also include an estimate of the affect on the upcoming seed harvest. These petitions will be limited to a 1,000 acre allocation, out of the annual 2,000 acre limit for emergency burning. After reviewing all petitions received by June 1, the Department shall notify each grower petitioner whether all, part, or none of the acres requested for emergency burning were approved.

(b) Petitions submitted between July 1 and September 1 shall include the documentation specified in subsection (4), based primarily on evidence of a disease outbreak or insect infestation from the most recent seed harvest. Prior year seed harvest information may be included, as well as other more recent evidence if available. These petitions shall be limited to a 1,000 acre allocation, out of the annual 2,000 acre limit for emergency burning. If any of the prior allocation in subsection (a) remains, it will be carried over to this allocation. Petitions submitted during this time period will receive an allocation on a first-come first-serve basis. However, petitions approved prior to August 15 will only allow a maximum of 200 acres per petition. After August 15, this limit will not apply, and the remainder of the allocation will be available on a first-come first-serve basis, providing any of the allocation remains. For each petition submitted during this time period, the Department shall notify each grower petitioner whether all, part, or none of the acres requested for emergency burning were approved.

(c) Any petitions not approved in subsection (a) due to limited allocation can be resubmitted on July 1 to be eligible to that allocation, subject to the same first-come-first serve allocation method.

(10) The Commission delegates to the Director the authority to permit emergency burning by order pursuant to and by the standards contained in ORS 468A.610(11)(a).

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

Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468A.610
Hist.: DEQ

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, or other communication technology method as approved by the Department, and 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 for areas where burning is restricted or prohibited, as specified in OAR 340-266-0075.~~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; Should smoke intrusions occur in the Eugene-Springfield area from the burning of identified species, steep terrain, propane flaming, or stack burning, pursuant to OAR 340-266-0060, that are in excess of the cumulative hours identified below, the minimum allowable effective mixing height for any additional open field burning for remainder of the year shall be as follows:~~

| <u>Cumulative Hours in the Eugene-Springfield Area</u> | <u>Minimum Effective Mixing Height (feet)</u> |
|--|---|
| <u>0-14 hours</u> | <u>No minimum</u> |
| <u>15-19 hours</u> | <u>4,000</u> |
| <u>20-24 hours</u> | <u>4,500</u> |
| <u>25 and greater</u> | <u>5,500</u> |

~~(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; The effective mixing height restrictions in paragraph (a) of this subsection shall not apply to emergency burning or experimental burning, pursuant to OAR 340-266-0065 and OAR 340-266-0100.~~

~~(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.

[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.]

~~[ED. NOTE: The Table referenced in this rule is available from the agency.]~~

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.590

Hist.: DEQ 29, f. 6-12-71, ef. 7-12-71; DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. & ef. 6-4-76; DEQ 138, f. 6-30-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 22-1978, f. & ef. 12-28-78; DEQ 24-1979(Temp), f. & ef. 7-5-79; DEQ 28-1979, f. & ef. 9-13-79; DEQ 30-1979, f. & ef. 9-27-79; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-89; DEQ 8-1989, f. & cert. ef. 6-7-89; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0015

340-266-0075

Burning Restrictions and Prohibitions.

The following identifies smoke management requirements for Priority Areas, Critical Non-Burn Areas, Fire Marshal Buffer Zones, and Problem Fields, where burning is either restricted or prohibited, in order to further protect public health and safety from smoke impacts and potential fire hazards:

(1) Priority Areas:

(a) The following are priority areas where open field burning, propane flaming, and stack burning are restricted by the Department. No priority area acreage shall be burned upwind of any city, airport, Interstate freeway or highway within the same priority area. Any burning within a priority area is subject to field-by-field authorization by the Department.

(A) Within three miles of the city limits of incorporated cities having populations of 10,000 or greater;

(B) Within three miles of the city limits of the City of Lebanon;

(C) Within one mile of airports servicing regularly scheduled airline flights;

(D) Areas on the west and east side of and within 1/2 mile of Interstate I-5, from Portland to the Douglas/Lane County lines;

(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.

(b) Parts of the Interstate I-5 and highway priority areas identified above are subject to the State Fire Marshal rules for fire safety buffer zones, which require a noncombustible area be established. See subsection (3) of these rules.

(c) Each responsible person open field burning, propane flaming, or stack burning within a priority area shall refrain from burning and promptly extinguish any burning if it is likely that the resulting smoke would noticeably affect the priority area.

(2) Critical Non-Burn Areas:

(a) Burning is prohibited in critical non-burn areas. No person shall cause or allow any open field burning, propane flaming, or stack burning in the following critical non-burn areas:

(A) Any part of a field that is underneath a power transmission line of 230kV rating or greater, extending 75 feet on either side of the center line of the power transmission line.

(B) Any part of a field within 500 feet of a hospital.

(C) Any part of a field within 500 feet of a school, when the school is in-session. A school shall be considered not in-session during the following time periods:

(i) During the regular summer closure period, ending 7 days prior to the first day of regular fall classes. The Department will determine the end of the regular summer closure period by reviewing each affected schools regularly published school-year calendar;

(ii) 2 hours after the time the school day is officially over. The official end of the school day will be determined by the Department as published in each affected schools regular school-day calendar.

(D) Any part of a field within 500 feet of any airport servicing regularly scheduled airline flights. In cases where an airport does not have regularly scheduled flights, field by field burning may be authorized by the Department, in accordance with the requirements in subsection (4) that apply to problem fields.

(b) It shall be the responsibility of the grower to ensure the critical non-burn area does not burn. It is recommended that the field stubble either be flail-chopped, mowed, or otherwise cut close to the ground, and the loose straw removed so that the field will not sustain an open fire. Application of water to the critical non-burn area to ensure there is no combustion is also recommended. Should any open fire occur, all flame and smoke sources shall be immediately and actively extinguished.

(c) Each responsible person conducting open field burning, propane flaming, or stack burning adjacent to a critical non-burn area shall take appropriate steps to ensure that the critical nonburn area remains unburned.

(d) Field by field burning may be authorized by the Department within 500 feet of a school that is not in-session, subject to the following restrictions:

(A) No burning is allowed upwind of the school:

(B) The responsible person burning the field makes a visual observation to first confirm that there are no children or other persons present on the school grounds.

(e) When burning next to a school or hospital critical non-burn area, or beyond 500 feet of a school that is not in-session, the Department shall take special precautions to ensure that prevailing winds do not cause smoke to impact the school or hospital.

(f) Any field that is intersected by a power transmission line of 230kV rating or greater shall be registered and burned as two separate fields, to minimize the potential of smoke to come into direct contact with the power transmission line.

(3) State Fire Marshal Safety Buffer Zones:

(a) State Fire Marshal Rules for fire safety buffer zones, as specified in OAR 837, Division 110, establish a 1/2 mile buffer zone for Interstate I-5 and the highways listed below in this subsection. No person shall cause or allow any open field burning, propane flaming, or stack burning in the following portions of the State Fire Marshal fire safety buffer zones:

(A) Within 1/4 mile of either side of Interstate I-5, from Portland to the Douglas/Lane County lines.

(B) Within 1/8 mile of either side of the designated roadways listed below, as specified in the State Fire Marshal Rules in OAR 837, Division 110:

(i) ORE 99 - The section from Junction City to Eugene;

(ii) ORE 99E - The sections from Oregon City to Salem and from Albany to Junction City;

(iii) ORE 99W - The entire section from Portland to Junction City;

(iv) US 20 - The section from Philomath to Lebanon;

(v) ORE 22 - The section from ORE 18 to Mehama;

(vi) US 26 - The section from ORE 47 interchange to Portland;

(vii) ORE 34 - The section from Corvallis to Lebanon.

(b) The 1/4 and 1/8 mile safety buffer zone distances identified above must be a noncombustible area, as defined in the State Fire Marshal Rules. For all requirements related to the State Fire Marshal Fire Safety Buffer Zones, see OAR 837, Division 110. Nothing in the Departments' rules regarding fire safety buffer zones replaces or substitutes for meeting all the requirements in the State Fire Marshal Rules.

(c) The area beyond the 1/4 and 1/8 mile noncombustible area in the fire safety buffer zone represents the area that is considered a priority area as described above in subsection (1)(a)(D) and (E). Burning in this part of the fire safety buffer zone is subject to the restrictions for priority areas in subsection (1) of these rules.

(4) Problem Fields:

(a) No problem fields shall be burned without first contacting the Department to determine what specific weather conditions and smoke management criteria need to be followed when burning the field, in order protect any school, hospital, airport, or other sensitive area, in proximity to the field.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.610

Hist.: DEQ

340-266-0080

Burning by Public Agencies (Training Fires)

In order to promote public safety through the training of firefighting personnel, ~~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 a fire department or rural fire protection district is 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 fire authority having jurisdiction, and must be conducted in a manner consistent with the primary ~~its~~ purpose of providing training to firefighting personnel, in accordance with ORS 468A.020.

(2) Such burning must be limited to the minimum number of acres and occasions reasonably needed to ensure adequate fire fighting personnel training, ~~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.~~

(3) Consultation with the Department of Agriculture by the fire department or rural fire protection district is required, in order to identify the appropriate atmospheric dispersion and burning conditions for optimum smoke dispersal, to protect the public from smoke impacts.

(4) No training fires shall be allowed on any acreage that is in a State Fire Marshal safety buffer zone, and any training fire being considered in a critical non-burn area, Priority Area, or Problem Field, shall comply with the requirements in subsection (3) of these rules.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.020

Hist.: DEQ 5-1984, f. & ef. 3-7-84; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 4-1993, f. & cert. ef. 5-11-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0031

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.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.600

Hist.: DEQ 11-1987, f. & ef. 6-15-87; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0033

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 con-siderations 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 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.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.620

Hist.: DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0035

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.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.610

Hist.: DEQ 5-1984, f. & ef. 3-7-84; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0040

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 OAR 340-266-0050;

(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 837-110-0155;

(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.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.600

Hist.: DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-89; DEQ 8-1989, f. & cert. ef. 6-7-89; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0045

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 registered and 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.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.600

Hist.: DEQ 11-1987, f. & ef. 6-15-88; DEQ 8-1989, f. & cert. ef. 6-7-89; DEQ 5-1992, f. & cert. ef. 3-3-92 (and corrected 3-18-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-026-0055.

340-266-0140

Burning Fees Outside Willamette Valley

In accordance with ORS 468A.615(1)(b), each person open field burning perennial or annual grass seed crops in counties outside the Willamette Valley, shall pay the Department \$8.00 for each acre burned.

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.615

Hist.: DEQ

Summary of Public Comments and Agency Response

DEQ Willamette Valley Field Burning Revisions

Prepared by: Brian Finneran, DEQ Air Quality

Date: June 8, 2010

Comment Period: The initial public comment period opened on April 1, 2010, and closed at 5 p.m. on April 30, 2010. Based on a request to extend the comment period, DEQ reopened it on May 12, 2010 and closed it May 21, 2010 at 5 p.m.

Public Hearings: DEQ held the following public hearings:

- April 26, 2010, 6 p.m.
Oregon State Fair & Expo Center, Cascade Hall
2330 17th Street NE Salem, OR
Five people attended the hearing; three people testified
- April 27, 2010, 6 p.m.
Eugene State Office Building, Willamette Conference Room
165 East 7th Avenue Eugene, OR
Four people attended the hearing; four people testified.

Total attendance at public hearings: Nine persons

Total number providing verbal testimony: Seven persons

Organization of comments and responses:

Summaries of the comments received and DEQ's response are provided below. Comments are summarized by category.

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Overview of Public Comment Process

DEQ presented this proposed rulemaking for public comment from April 1, 2010 to April 30, 2010. The comment period was reopened on May 12, 2010, until May 21, 2010. Two public hearings were held, as noted above. DEQ Hearings Officer at both hearings was Brian Finneran. These hearings were held jointly with the Oregon Department of Agriculture (ODA), who were proposing nearly identical rule revisions.

The two public hearings are discussed separately in the Hearings Officers’ Report in **Attachment C**.

The following types of comments were received:

- 188 emails
- Six written letters
- Seven persons testified at the public hearings.

Overall, DEQ received 200 individual comments. Additionally, one letter was submitted on behalf 104 persons, and another was submitted on behalf of 83 persons. Including these numbers, the total comments are 387.

The testimony provided at the public hearings is summarized in the Hearing Officer’s Report. The comments submitted outside of the public hearings are summarized below. All testimony and comments are summarized in this document. A list of all commenters is provided at the end of this document.

All comments received have been made part of the public record and have been reviewed by DEQ. A copy of the full public comment record is available for the DEQ Headquarters, 811 SW 6th Ave. Portland. Photocopies of the record are available for a fee.

Summary of Public Comments Received During the First Comment Period, Ending April 30, 2010.

For a summary of the testimony at the public hearings, see attachment C. The following is a summary of comments received outside of the public hearings.

- Paul Holvey, State Representative, District 8

Representative Holvey stated that his primary concern was limiting and restricting the statutory authority of the Environmental Quality Commission under the proposed rules. In establishing rules for critical non-burn areas, he said the intent of Senate Bill 528 was not to limit this only to the Willamette Valley, nor to specific areas, or a certain size or distance. For example, he said that the EQC has the ability to address a potential critical non-burn area in Union County (outside the Willamette Valley) that could be a certain event or activity at a school that is not in session. He added that the proposed rule should not, and cannot, take away statutory responsibility from the EQC. For emergency burning, he indicated that the intent of Senate Bill 528 was only to allow such burning when an extreme hardship exists, no other alternative is available, and the hardship outweighs the danger to public health. He cited evidence that short-term exposure to field burning smoke is a threat to public health, and how smoke intrusions, such as one that occurred in Lane County and west Eugene in July of 2008, can impact public health, yet not exceed air quality standards, due to the short-term nature of the impact.

- Floyd Prozanski, State Senator, District 4

Senator Prozanski commented that as co-chief sponsor of Senate Bill 528, protecting public health from field burning smoke was the primary objective. On the proposed emergency burning rules, he questioned the authority to delegate the decision-making process from the EQC to a state agency. He said the intent of the bill was to have the EQC make these decisions, and did not authorize such delegation. On the proposed rules for critical non-burn areas, he questioned whether the 500-foot buffer was adequate to provide protection in these areas. He also questioned the proposed elimination of the 35 acre limit on training fires that are conducted by fire departments on grass seed fields.

- Larry Dunlap, Physician

As a physician, he stated that he had a special interest in air quality in the southern part of the Willamette Valley. He said the proposed rules do not appear cover the broader issue of field burning as a whole. Burning of mint fields and “pile burning” do not appear to be addressed. He also questioned why the field burning rules focus on the summer (6/14 to 9/14 specifically), when there is burning at other times of year, and that the rules should address more than just grass and cereal grain

fields. He noted that the definition of a two-hour smoke intrusion was raised from 4 to 5 b-scat units for no apparent reason, and that the goal should be to improve air quality. He also expressed the concern that the proposed emergency burning rule and 2,000 acre limit will be abused, and that alternatives to burning are available, and should be emphasized.

- Dave Fiskum, Hewlett-Packard

Dave submitted comments on behalf of Hewlett-Packard (HP), related to the provisions in Senate Bill 528 that address field burning near major power transmission lines. He pointed out that field burning in recent years has resulted in five power outages for the HP plant in Corvallis, and other businesses and residences in the mid-Willamette Valley. He stated that the proposed 150-foot buffer (or 75 feet from the center of the line) is not wide enough to protect these power lines, and recommends one-quarter mile, or 660 feet from the center of the power line. He indicated that while this distance does not ensure there will be no power outages, it is clearly much more protective than the smaller area being proposed. In describing the previous power outages or interruptions, he noted that the financial impact at HP was \$100,000 per incident. The last power interruption in 2008 was caused by an erratic whirlwind that blew smoke into the lines. As a result, he supports changing the 150-foot wide buffer with a one-quarter mile wide no-burn area.

- Jennifer Shmikler, Oregon Farm Bureau Federation

Jennifer submitted comments on behalf of its' 8,000 members statewide who are farmers and ranchers. In general, she stated that the OFBF opposes any rules that further restrict the accepted farm practice of agricultural burning. She cited concerns about the impact of Senate Bill 528 on grass seed farming, and how it will also cause more soil erosion, greater reliance on pesticides and chemicals, and other negative consequences. Regarding the proposed emergency burning rules, she stated the application process needs to be simpler, so that farmers who have disease and insect problems can burn. She recommended deleting or amending OAR 340-266-0065(c), which requires a description of financial and economic hardship, as it is an overly cumbersome process for farmers, and stated that an analysis provided by a certified crop consultant should suffice to meet this provision. She said this proposed rule is overly bureaucratic and likely will deter farmers from even applying for this burning. She noted that farmers need to be able to respond quickly to these problems, and by making the rules more responsive and simplified, will allow infected fields to be treated faster, and thereby minimize the total acres needing to be burned. On the proposed rule for critical non-burn areas, she said the OFBF does not support going beyond the statutory language to protect power transmission lines, and found no evidence that field burning smoke has been a problem near schools, hospitals, or airports. She stated that the current field burning program administered by ODF adequately protects these areas, but that OFBF would support future restrictions should evidence be found that indicates otherwise. She stressed the negative impact this rule provision would have on farmers who rely on field burning in these areas. On the proposed critical non-burn area requirements under power transmission lines, she stated that the 150-foot buffer is too wide and should be limited to the area immediately under the power lines.

Summary of Public Comments Received During the Second Comment Period, Ending May 21, 2010.

DEQ received a total of 189 comments after reopening the comment period. The names of each commenter are listed in the table below. For the purpose of this summary, the following describes the comments submitted. The majority were provided via a form letter (email), as noted below.

- Summary of majority of comments, submitted in an email, primarily as a form letter.

There were approximately 165 persons who submitted individual emails as a form letter. The following summarizes the comments contained in the form letter.

The newly proposed rules fail to uphold the intent of SB 528 to protect public health. The policy of Oregon is now to ensure that public health is not compromised by the practice of field burning. The new rules do not achieve this policy.

1. Promote alternatives to field burning first. The new rules create loopholes to enable burning of additional species that the industry may claim require additional field burning.

2. Never allow burning near schools or homes. Under emergency burning there can be significant risk to human health from burning 5 or more miles away. Requiring a petitioner merely to identify neighbors within a ¼ mile area rather than protect these neighbors is inadequate and inconsistent with SB 528.

3. The proposed 500-foot critical non-burn area is not protective enough. Research shows that particulate matter and cancer-causing chemicals in field burning smoke can harm people as far as 5 miles away. The smoke is potentially lethal as well, depending on the health of the adult or child exposed. Critical non-burn areas should be a minimum of 5 miles from any school grounds, nursing homes or hospitals. In addition, DEQ has not provided any scientific basis for the proposed 500-foot critical non-burn area. Non science-based rule making does not belong in statute.

4. The proposed emergency burning rule eliminates the statutory requirement that the Environmental Quality Commission make the finding that an extreme hardship outweighs the dangers to public health that would be caused by proposed emergency burning. This is unacceptable in light of the clear policy protecting public health in SB 528.

5. The proposed rules should make the air healthier. EPA's 2008 National Scale Air Toxics Assessment ranks Linn and Lane Counties as having an excess cancer rate of 30-40 cancers per million (the standard is 1 cancer per million). This is too high.

6. Under the rule proposal, critical non-burn areas would only apply within the Willamette Valley. If breathing smoke is bad for people, protecting all Oregonians should be the objective, and the non-burn area restrictions should apply for all agricultural burns in the state.

- Summary of the other comments

There were approximately 25 emails submitted, many of which strongly opposed field burning in general, and urged a complete ban on it. Some of these were concerned that the proposed rulemaking would increase burning, and result in a relaxation of the limits in Senate Bill 528. Many cited concerns about the health effects from field burning, and some indicated they or family members had asthma conditions that were aggravated by this burning. One email expressed support for the proposed rulemaking. One email noted that the smoke was less dangerous to the public than the chemicals used on the fields. One said that phasing out field burning was bad for the grass seed industry.

Summary of Comments and Agency Response

The following is a summary of the comments received on this rulemaking, and DEQ's response. The comments listed are not intended to be the exact wording, and some comments were grouped together by DEQ, for the purpose of providing one response to several comments. Comments are also grouped by topic.

| Summary of Comments and Agency Responses | |
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| Proposed rules will increase field burning, should ban all burning. | |
| 1. Comment | <i>DEQ's proposed rules will allow more field burning than permitted under Senate Bill 528, and weaken or overturn what was achieved by this legislation.</i> |
| Response | <p>Nothing in this rulemaking will allow more field burning than allowed by law. DEQ rules are being revised to incorporate the field burning acreage limits exactly as specified in Senate Bill 528. This bill is now state law. This rulemaking, if adopted, will implement these limits on field burning.</p> <p>Under Senate Bill 528, Willamette Valley field burning is reduced from 65,000 acres to 15,000 acres per year. Prior to the bill, state law allowed 40,000 acres of general field burning and 25,000 acres of burning on "steep terrain and identified species". Passage of the bill eliminated the 40,000 acre limit completely (starting in 2010) and reduced steep terrain and identified species to 15,000 acres. None of the 15,000 acres can be burned in Benton or Lane Counties, and almost all of Linn County. Under Senate Bill 528, emergency burning of up to 2,000 acres per year can be allowed for disease outbreaks and insect infestations. Additionally, other types of burning, such as stack or pile burning, and propane flaming, will be completely banned by 2013.</p> |

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| 2. Comment | <i>All field burning should be immediately banned.</i> |
| Response | As noted above, DEQ rules are being changed to reflect the changes in state law required by Senate Bill 528. This bill did ban field burning of 40,000 acres per year in the Willamette Valley, starting in 2010. Other types of burning, such as stack or pile burning, and propane flaming, will be banned by 2013. Only 15,000 acres of steep terrain and identified species burning remain, and up to 2,000 acres in emergency burning (the latter if approved). |
| Proposed rules not consistent with Senate Bill 528 | |
| 3. Comment | <i>The proposed rules need to mention the prohibition on field burning specified in Senate Bill 528.</i> |
| Response | The proposed rules in OAR 340-266-0060 adopt all the acreage limitations in Senate Bill 528, and which are now state law (see ORS 468A.610). The proposed rules are fully consistent with these limits, and do not authorize any more burning than under state law. |
| 4. Comment | <i>The policy statement in OAR 340-266-0020 refers to a “maximum level of burning” with a “minimum level of smoke impact”. This language is outdated, and needs to be changed to reflect the new emphasis in Senate Bill 528 that public health is not to be compromised.</i> |
| Response | <p>The existing language in policy section of the rules (OAR 340-266-0020) that refers to a maximum level of burning with a minimum level of smoke impact is only part of the policy statement. Other language in the same rule section says it is the policy “to control, reduce, and prevent air pollution” from field burning, which is clearly designed to protect public health.</p> <p>However, DEQ agrees that the language is outdated and should be more closely aligned with recent changes to state law, and has amended OAR 340-266-0020(1) as follows:</p> <p>“(1) To allow provide for a maximum level of field burning based on the limits specified in state law while protecting public health and welfare, with a minimum level of smoke impact on the public, recognizing:</p> <ul style="list-style-type: none"> (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. |

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| <p>5. Comment</p> | <p><i>The proposed rules are not protective enough of public health in general, and do not meet the intent of Senate Bill 528.</i></p> |
| <p>Response</p> | <p>This rulemaking incorporates the changes to state law under Senate Bill 528. The bill can be broken down into three parts that are directly related to protecting public health: (1) reducing or eliminating field burning as specified in the bill; (2) provisions to allow up to 2,000 for emergency burning; and (3) provisions to establish critical non-burn areas.</p> <p>As noted above, this rulemaking incorporates the acreage limits in the bill, which cannot be exceeded. For emergency burning and critical non-burn areas, the responses below in #6 through #27 go into detail about how these two new rules would be implemented to protect public health, as required by Senate Bill 528.</p> |
| <p>Emergency Burning OAR 340-266-0065</p> | |
| <p>6. Comment</p> | <p><i>The proposed emergency burning rule is not stringent enough, and does not meet the standard of “extreme hardship” as required by Senate Bill 528. When the legislature used the term “extreme hardship”, it meant extreme. The proposed emergency burning rule needs to be based on a genuine emergency, where no other alternatives exist except to burn. It needs to be based on an “extreme economic hardship”, such as economic loss that causes the grower to file for bankruptcy or seek state or federal welfare payments.</i></p> |
| <p>Response</p> | <p>Senate Bill 528 did not define “extreme hardship” (due to disease outbreak or insect infestation) nor does it say that it must be shown to be an extreme economic hardship, or that no other alternatives exist.</p> <p>By setting a limit on emergency burning at 2,000 acres per year in Senate Bill 528, it was clear that the legislature intended to keep burning as an option for addressing disease outbreak and insect infestation. But first, the burning must be shown to be necessary, based on a finding of extreme hardship, due to the disease outbreak and insect infestation, that “outweighs the dangers to public health and safety” from emergency burning. In developing this rule, DEQ’s goal was to meet the stringency of Senate Bill 528, but not to be overly restrictive so that no emergency burning would ever be approved. The bill clearly allows for burning provided it can be conducted safely and with the maximum protection to public health (see response #11 below).</p> <p>The function of emergency burning is to eradicate the problem of disease outbreak and insect infestation. At a certain point, based on the severity of the outbreak or infestation, burning is no longer an effective tool, and the only</p> |

remaining option is “stand replacement”, or destroying the infected crop by plowing the field, and replanting to a new crop. Thus if emergency burning is to serve as one possible treatment option for eradicating a disease or insect problem, the determination of “extreme hardship” needs to reflect the point at which burning can still be effective as a treatment, prior to destroying the crop through stand replacement.

The emergency burning rule developed by DEQ is a stringent rule. It requires a grower to submit to DEQ considerable documentation and evidence of a major disease outbreak or insect infestation, as a means for DEQ to determine if an extreme hardship exists. Part of this determination is based on the grower submitting seed testing results from the most recent seed harvest, certified by an independent seed lab, to verify the presence of seed contamination. In addition, the grower must include a description of the extent of the damage to the infected field, how burning to eradicate the problem would be more effective than a non-burning treatment, what alternatives to burning are feasible, and the financial and economic hardship posed by the outbreak or infestation, in terms of being able to sell the infected seed. All of this information and documentation is then to be reviewed by DEQ to determine if an extreme hardship exists.

Senate Bill 528, in addition to not defining “extreme hardship,” did not provide any guidance for how to evaluate “economic hardship” either. DEQ’s rule does require an evaluation of the economic and financial hardship posed by the disease or insect outbreak. However, DEQ does not interpret the term “extreme hardship” to be limited to circumstances in which a grower must either burn or file for bankruptcy.

In response to these comments, DEQ has made three rule changes. The first is a change to the definition of “emergency open burning” in OAR 340-266-0030(12), to more align it with the language in Senate Bill 528:

“(12) “Emergency Open Burning” means the open burning, propane flaming, or stack burning of a grass seed or cereal grain field infested with a disease or pest, where an extreme hardship exists due to a disease outbreak or insect infestation that outweighs the dangers to public health and safety from the burning, for which other practical control exists, as approved by the Department, pursuant to the acreage limitation in OAR 340-266-0060, and the requirements in OAR 340-266-0065. Such burning shall be authorized by the Department as field-by-field burning, and utilize a field specific burn plan, to minimize danger to public health and safety to the greatest extent practicable.”

The second rule change is to the emergency burning rule in OAR 340-266-0065(4)(b)(C), related to the need to show that alternatives to burning are fully evaluated prior to approving any emergency burning. Some of the commenters

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| | <p>suggested adding “<u>crop rotation</u>” as one of the possible alternatives to burning, and adding the words “similar to”, so that alternatives to burning (including crop rotation) can be shown to be “<u>similar to or more effective</u>” than burning in eradicating the problem.</p> <p>The third rule change is to add a definition of “extreme hardship”. This is provided in response #7 below.</p> |
| <p>7. Comment</p> | <p><i>The proposed emergency burning rule does not contain a specific definition of “extreme hardship.” This is essential to this rulemaking.</i></p> |
| <p>Response</p> | <p>As noted above, Senate Bill 528 did not define “extreme hardship.” Under the proposed emergency burning rule, the determination of extreme hardship involves evaluating many factors on a case-by-case basis, to determine the severity of each disease outbreak or insect infestation, as well as evaluating the economic hardship on the grower. The proposed rules did not seek to define extreme hardship in every circumstance due to the fact that extreme hardship can only be determined on a case-by-case basis.</p> <p>However, in response to this comment, DEQ has developed a definition, and which is added to OAR 340-266-0030:</p> <p><u>“(13) Extreme Hardship due to disease outbreak or insect infestation” means a case-by-case finding related to the approval of emergency burning, based the severity of an agronomic and economic impact on a grower that is caused by a disease outbreak or insect infestation, as determined by the Department, pursuant to OAR 340-266-0065. Agronomic impact includes, but is not limited to, the risk of disease spread, the extent of damage to the grass stand, loss in seed yield, quality, or purity, need for stand replacement if no burning occurs, availability and feasibility of alternatives, and effectiveness of burning in eradicating the problem. Economic impact includes, but is not limited to, loss in market value of the harvested seed, total fields owned by the grower in relation to the infected field or fields, and cost of alternative treatments compared to the cost of burning.”</u></p> |
| <p>8. Comment</p> | <p><i>The proposed emergency burning rule allows a grower to show extreme hardship by documenting a seed germination rate more than 10% under the market standard. This clearly does meet the stringency required by Senate Bill 528.</i></p> |
| <p>Response</p> | <p>As mentioned above in response #6, one of the criteria DEQ will evaluate in determining extreme hardship is seed testing results conducted by an independent seed lab, to verify the presence of seed contamination. This contamination can be shown by providing seed germination testing results. If</p> |

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| | <p>these results are more than 10% under the seed quality and purity standards that have been established for each grass variety, this can greatly affect the marketability of the grass seed.</p> <p>DEQ views the 10% criteria as the starting point for determining if an extreme hardship exists. There are several criteria in the rules for making this determination. They include the grower submitting information on the need for stand replacement if no burning is conducted, the effectiveness of burning to remedy the problem, similar evidence on the effectiveness of alternatives to burning, and documentation from an extension agent to support the grower's claim of a major disease or insect problem. The grower can also submit other documentation to show there is a major outbreak or insect problem. Overall, the burden is on the grower to provide sufficient evidence to DEQ on the extent and severity of the problem. Failure to do so will result in the emergency burning petition not being approved by DEQ.</p> |
| <p>9. Comment</p> | <p><i>The proposed emergency burning rule fails to take into account in determining extreme hardship the full extent of the financial hardship to the grower, such as the difference between a large grower who owns several fields, and another who owns only two fields, where the latter would be much more adversely impacted by a disease outbreak.</i></p> |
| <p>Response</p> | <p>This is already addressed in the proposed rule. OAR 340-266-0065(4)(c) requires the grower to describe the “overall financial loss from the outbreak or infestation, in relation to total number of grass seed field that are part of grower’s farming operation, as a means of showing the extent of the financial impact”.</p> <p>However, in response to this comment, further clarification has been made to the provisions in OAR 340-266-0065(4)(c), by adding the following underlined language: “overall financial loss from the outbreak or infestation, in relation to total number of grass seed fields that are part of grower’s farming operation, as a means of showing the extent of the financial impact, <u>which shall be considered in the determination of extreme hardship</u>”.</p> |
| <p>10. Comment</p> | <p><i>In the proposed emergency burning rule, the provision that makes it optional for growers to get an independent assessment of a disease outbreak or insect infestation by a certified crop scientist should be mandatory.</i></p> |
| <p>Response</p> | <p>Under proposed OAR 340-266-0065(4)(b)(D), growers are “strongly encouraged to obtain documentation of the severity of the disease outbreak or insect infestation from an extension agent or qualified agronomist or consultant.” The reason for making this optional was to not impose this requirement if the grower could provide credible documentation of this type.</p> |

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| | <p>However, providing independent verification on the severity of an outbreak or infestation would simplify and shorten the review process when emergency burn petitions are submitted. As noted in response #12 below, an expedited review process is an important element of this rule. Since DEQ has no expertise in agricultural crop diseases, it was anticipated that staff would consult with OSU extension agents to verify this information. In doing so, it was expected this would add to the review time and lengthen the process.</p> <p>Therefore, consistent with the need for an expedited review process, and the fact that independent verification by an extension agent would be needed by DEQ, this provision in OAR 340-266-0065(4)(b)(D) has been changed to require verification by an extension agent or qualified agronomist or consultant.</p> |
| <p>11. Comment</p> | <p><i>Senate Bill 528 requires that emergency burning can only be allowed if it “outweighs the dangers to public health and safety”. DEQ proposed rules fails to meet this requirement. In addition, the requirement for “burn plans” for each field will not adequately protect the public from smoke impacts. The provision that burn plans identify neighbors within ¼ mile of the field to be burned is completely inadequate. Similarly, the provision to avoid burning on dates of “special events” does not properly reflect concerns of protecting public health.</i></p> |
| <p>Response</p> | <p>DEQ recognizes that the primary requirement in the bill for emergency burning is demonstrating that the extreme hardship outweighs the danger to public health and safety. This determination will be made on a case-by-case basis. DEQ believes the proposed rules adequately identify factors that should be considered to make case-by-case determinations.</p> <p>It should be noted that the bill does not state there must be zero risk to public health before emergency burning is authorized. By allowing up to 2,000 acres of emergency burning each year, the bill is allowing some smoke (air pollution), but clearly requires every effort to be made to keep this smoke from impacting the public. The objective of any smoke management program is to conduct burning under weather conditions that promote smoke dispersal and avoid any smoke impacts. ODA’s Field Burning Program is a mandatory program that requires stringent controls when managing burning to protect public health. For emergency burning, one of the new requirements is “field-specific burn plans”, or comprehensive burn plans for each field, not previously required under the program. This extra measure of protection is expected to provide the maximum level of protection possible, by requiring the most restrictive smoke management controls for each emergency burn.</p> <p>Each burn plan would identify all the constraints to burning the field, and identify especially sensitive areas or activities to be protected, such as nearby</p> |

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| | <p>residents, schools, hospitals, towns and cities, highways, and special events or community activities. Constraints on burning include all existing rule requirements that already restrict field burning in “priority areas”, “critical non-burn areas”, and “fire safety buffer zones”. Each plan would identify and require burning on the best weather conditions, such as specific surface and transport wind directions, and any special field preparation needed and specific burning instructions. ODA program staff would manage and monitor each field on the day of the actual burn.</p> <p>OAR 340-266-0065(6)(a) contains provisions that require a detailed evaluation of potential risk to the public when preparing a burn plan. Identifying neighbors within a ¼ mile of the field is an additional protective measure to account for persons who may live in the immediate proximity of the burn. This provision does not mean that persons beyond this distance will be any less protected from the smoke. Similarly, the provision to identify “any special events, community activities, sporting events, etc., that should be protected on certain dates” is another extra measure to avoid causing any smoke problems when conducting emergency burning. These provisions represent a more restrictive approach to managing field burning, and are designed to add to, and not detract from, the standard smoke management requirements that protect public health and safety.</p> <p>It should be noted that having a burn plan does not guarantee the burning will take place. It is possible that the combination of constraints to burning a given field may prevent the field from being burned. After each emergency burning petition is approved by DEQ, there is still the need to wait for the best conditions during the summer, including the specific wind and meteorological conditions specified in the burn plan. See also response #17.</p> |
| <p>12. Comment</p> | <p><i>Senate Bill 528 specifies that the approval of any emergency burning can only be made by the Environmental Quality Commission, and cannot or should not be delegated to a state agency, as proposed in this rulemaking.</i></p> |
| <p>Response</p> | <p>Senate Bill 528, under ORS 468A.585(2)(a) prohibits the delegation of emergency burning authority from the EQC to the Oregon Department of Agriculture. However, the bill does not prohibit this delegation to DEQ. Oregon law generally allows the EQC to delegate functions to DEQ unless there is some evidence that the legislature did not intend to allow delegation.</p> <p>The primary reason for this delegation of emergency burning is the need for an expedited review process, in response to serious disease outbreaks or insect infestations. The initial estimate for this review was 6-8 weeks going through the EQC. This covered the time from the petition being submitted to DEQ, being reviewed and evaluated, recommendations developed for the EQC, and then presented to the EQC for a decision at one of their prescheduled meetings every</p> |

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| | <p>two months. By delegating to DEQ, this time would be cut approximately in half. It should be noted that DEQ will report to the EQC on any emergency burning decisions, including an evaluation of the effectiveness of the burn plan in protecting public health.</p> |
| 13. Comment | <p><i>Emergency burning petitions being reviewed by DEQ should be posted on a website for public review. Persons on ODA's field burning notification list should be contacted, and the location of each potential emergency burn specified, so that Willamette Valley residents have the opportunity to comment on each petition and the potential threat to their health.</i></p> |
| Response | <p>As noted above, DEQ recognizes the need for an expedited process to respond promptly to emergency situations. However, DEQ also recognizes the need for the public being informed about potential emergency burning, especially in areas like the south Willamette Valley, where no other field burning will be allowed, and emergency burning is highly visible, should it occur.</p> <p>In response to this comment, DEQ has amended the rule to balance the need for an expedited process with the need for public review. The following language has been added to OAR 340-266-0065 which would allow a limited opportunity for review and comment on the burn plan that is included in each petition. This review and comment period would be for 7 days, as noted below:</p> <p><u>“(7)(c) Prior to approving any emergency burning petition, DEQ shall post the field specific burn plan, and a summary of the emergency burning petition, on DEQ’s website for a period of 7 days. Interested persons will be notified by the Department prior to or on the day of the posting. Comments can be submitted to DEQ on the proposed burn plan during the 7 day period. Any comments received will be considered by DEQ prior to acting on the emergency burning petition.”</u></p> <p>In addition to the above, approved emergency burn petitions, including the burn plan, will be posted for the entire period prior to the actual burning of the field. Additional notification will be provided by ODA for any person wishing to be contacted on a specific day the field is approved for burning.</p> |
| 14. Comment | <p><i>The proposed emergency burning rule needs to be less bureaucratic and a simpler process, otherwise it will deter farmers from applying for this burning. Also, growers need to be able to respond quickly to severe disease and insect problems, and by making this rule more responsive and simpler it would allow infected fields to be treated faster, and thereby minimize the total acres needing to be burned.</i></p> |
| Response | <p>DEQ believes the proposed rule reflects the appropriate level of stringency in Senate Bill 528 in terms of making burning available for emergencies involving</p> |

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| | <p>major disease and insect outbreaks that meet the criteria for extreme hardship and protecting public health. The delegation of authority from the EQC to the DEQ Director, and the required verification from an extension agent or agronomist, will permit a faster review time for emergency burning requests, and the provision to allow emergency burning petitions to be submitted twice a year makes it easier for the grower to seek approval and have adequate opportunity for burning on the best days. The acreage allocation provisions in the proposed rule allow for equitable access to the 2,000 acre limit for emergency burning. Finally, the provision requiring a burn plan for each field provides assistance to the grower from ODA in developing this plan.</p> |
| 15. Comment | <p><i>Section OAR 340-266-0065(4)(c) requiring the grower describe the financial and economic hardship should be deleted. This is an overly cumbersome and unnecessary requirement that will be a major deterrent to growers applying for emergency burning. Nor should it matter from an economic standpoint how many other fields the grower has, since a single outbreak can have a severe impact on a grower.</i></p> |
| Response | <p>DEQ believes the evaluation of the economic hardship and financial loss specified in this rule section is necessary and appropriate to meet the extreme hardship requirement in Senate Bill 528. And as noted in response #9, the provision to consider the total number of grass seed fields in the grower's farming operation in determining the overall financial impact is relevant to making this evaluation.</p> |
| 16. Comment | <p><i>On the proposed registration fees for emergency burning, growers should only have to pay the registration fee for the number of acres actually approved for emergency burning. Any additional acres registered but not burned should have the fee refunded.</i></p> |
| Response | <p>Traditionally, the field registration fee for regular field burning has been non-refundable, even if fewer acres were burned than registered. This fee covers the cost of processing registration forms, determining acreage allocations, and other costs related to administering the field burning program. It is expected that emergency burning will have costs associated with reviewing individual burn plans, smoke management forecasting, and oversight of the actual burning. Therefore, DEQ supports continuing the non-refundable fee.</p> |
| 17. Comment | <p><i>DEQ's proposed emergency burning rule is too lenient, and as a result, will result in the full legal limit of 2,000 acres being burned routinely every year.</i></p> |
| Response | <p>As noted in the above responses, DEQ believes the rule reflects the level of stringency intended by Senate Bill 528. DEQ has proposed a rule which requires</p> |

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| | <p>extensive documentation and information be submitted on the extent of a disease outbreak or insect infestation, and requires stringent burn plans and the most stringent smoke management controls to protect public health</p> <p>The proposed rule requires the same fees for emergency burning as the remaining other field burning (registration \$4 per acre and burn fee \$16 per acre). As a result, the total cost for emergency burning of a 50 acre field would be \$1,000. Given these costs, and the documentation and the burn plan requirements mentioned above, it is expected that only growers with severe disease and insect problems will apply for emergency burning approval.</p> <p>While it is difficult to predict how much emergency burning will occur each year, there is the possibility that some burn petitions will not be approved, as some may not meet the criteria of extreme hardship, while others may not be approvable because of the constraints identified in the burn plan. Also, as mentioned above, is the need to wait for optimum weather conditions prior to burning the field, which may or may not occur.</p> |
| <p>Critical Non-Burn Areas OAR 340-266-0075(2)</p> | |
| <p>18. Comment</p> | <p><i>Senate Bill 528 only mentions power transmission lines as critical non-burn areas. The proposed rules should only address these power lines. Instead, they go beyond statute by establishing a 500-foot no burn area around schools, hospitals, and airports. There are few reported cases that smoke from field burning has been a problem near these areas. The current ODA field burning program already adequately protects these areas.</i></p> |
| <p>Response</p> | <p>Senate Bill 528 says that critical non-burn areas “may include, but are not limited to, areas under power transmission lines.” DEQ discussed this with the Field Burning Advisory Committee, and there was some agreement that schools, hospitals, and airports should be provided additional protection from smoke. DEQ agrees there have been few reported cases of smoke problems near these areas, and that they have been generally well protected. In the past, grass fields burned near these areas have been treated as “problem fields” under OAR 340-266-0030(37), where special precautions were taken near schools, hospitals, airports, and other sensitive areas. Designating a field as a problem field did not require a past history of smoke problems, but rather was done as a precautionary measure. Similarly, establishing a 500-foot critical non-burn area around schools, hospitals, and airports is a precautionary measure, to better protect these areas from fire or smoke impacts. DEQ believes this approach is reasonable and consistent with the intent of Senate Bill 528.</p> <p>Based on mapping and research conducted by ODA, only 10 to 30 fields may be</p> |

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| | <p>potentially affected by the non-burn area around schools. No hospitals or airports were identified. This requirement would apply in the remaining part of the Willamette Valley (mostly Marion County) where burning is limited to 15,000 acres per year, and to emergency burning of up to 2,000 acres (if approved) valley-wide.</p> |
| <p>19. Comment</p> | <p><i>DEQ has not provided any scientific basis for the proposed 500-foot distance for critical non-burn areas.</i></p> |
| <p>Response</p> | <p>Critical non-burn areas are allowed but not required under Senate Bill 528. In addition, the size of these areas is not defined. As noted above, DEQ has chosen to require a 500-foot no burn area as an additional protective measure for schools, hospitals, and airports. This 500 foot distance was based DEQ and ODA smoke management experience in observing fire and smoke behavior, and meteorological knowledge as to what is a reasonable distance to provide this protection, in the event that surface wind turbulence caused smoke to drift toward these areas, even though the primary wind direction is away from these areas. While there was no specific scientific data that DEQ could identify, reliance on practical field experience and meteorology was relevant to this decision.</p> <p>Also, the critical non-burn area is not the only protection for schools, hospitals and airports. Under ODA’s current field burning program, field burning near these sensitive areas is carefully managed to avoid burning when winds are blowing directly towards these areas. These precautions have been effective in protecting these areas.</p> <p>Given these considerations, DEQ believes the 500-foot distance is appropriate and reasonable.</p> |
| <p>20. Comment</p> | <p><i>The proposed 500-foot critical non-burn area next to schools, hospitals and airports is inadequate to protect these areas, and should be at least 5 miles.</i></p> |
| <p>Response</p> | <p>Most of DEQ’s response to this comment is provided in #18 and #19. DEQ agrees that expanding the critical non-burn area to 5 miles would provide more protection, but does not agree a critical non-burn area of this size is reasonable.</p> <p>As pointed out above, ODA’s field burning program has been effective in protecting sensitive areas such as schools and hospitals, due to efforts to carefully manage burning and smoke dispersion.</p> <p>However, since this practice of taking special precautions near these sensitive areas was not a rule requirement, DEQ has added OAR 340-266-0075(2)(e):</p> |

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| | <p><u>“(e) When burning next to a school or hospital critical non-burn area, or beyond 500 feet of a school that is not in-session, the Department shall take special precautions to ensure that prevailing winds do not cause smoke to impact the school or hospital.”</u></p> |
| 21. Comment | <p><i>For the critical non-burn area around schools, there needs to be dates and times added to the rules to specify when the school is not “in session”, as well as allow for burning after school and on weekends.</i></p> |
| Response | <p>Under the proposed rules, a limited amount of field burning could be authorized by ODA within 500 feet of a school that was not in-session. As noted above in response #18, field burning near schools has been conducted for many years with few recorded smoke problems. Therefore, in response to the need to define “in-session”, DEQ has added OAR 340-266-0075(2)(a)(C)(i) and (ii):</p> <p><u>“(C) Any part of a field within 500 feet of a school or hospital, when the school is in-session. A school shall be considered not in-session during the following time periods:</u></p> <p><u>(i) During the regular summer closure period, ending 7 days prior to the first day of regular fall classes. The Department will determine the end of the regular summer closure period by reviewing each effected schools regularly published school-year calendar;</u></p> <p><u>(ii) 2 hours after the time the school day is officially over. The official end of the school day will be determined by the Department as published in each effected schools regular school-day calendar.”</u></p> |
| 22. Comment | <p><i>For the critical non-burn area around schools, the ban on burning should not be limited to just when the school is in session, but rather whenever children may be in the school or on school grounds.</i></p> |
| Response | <p>DEQ agrees there are occasions when children may be present after school, such as childcare programs, PTA meetings, community and sporting events, and other gatherings. In order to provide protection during these times, DEQ has added OAR 340-266-0075(2)(d)(A) and (B):</p> <p><u>“(d) Field by field burning may be authorized by the Department within 500 feet of a school that is not in-session, subject to the following restrictions:</u></p> <p><u>(A) No burning is allowed upwind of the school;</u></p> <p><u>(B) The responsible person burning the field makes a visual observation to first confirm that there are no children or other persons present on the school</u></p> |

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| | <u>grounds.”</u> |
| 23. Comment | <i>The proposed 150-foot critical non-burn area under power transmission lines is too large. Senate Bill 528 notes this area as being “under power lines”, and as such, the rules should reflect a smaller area directly under the lines, consistent with the bill language.</i> |
| Response | The term “under power lines” must be defined as a certain size or distance if it is to be implemented. Testimony on Senate Bill 528 by one of the power company representatives recommended a minimum distance of 100 feet. The choice of 150-feet was proposed in this rulemaking in order to provide an extra margin of protection. DEQ relied on ODA field experience and meteorological knowledge related to managing field burning in determining the appropriate distance. |
| 24. Comment | <i>The proposed 150-foot critical non-burn area under power transmission lines is too small. A larger area extending to one-quarter mile would be much more protective and should be adopted.</i> |
| Response | <p>DEQ recognizes there are different opinions on what should be the proper size of the no-burn area under power lines, but based on the testimony cited above in #23, believes that the 150-foot area is a reasonable size to provide this protection.</p> <p>In addition, it should be noted that DEQ proposed under OAR 340-266-0075(2)(f) to require any grass field that is intersected by a power line to be registered and burned as two separate fields. This would allow better control and management of the smoke, by taking advantage of winds that can blow the smoke away from the power line.</p> |
| 25. Comment | <i>Senate Bill 528 does not limit the critical non-burn areas to just the Willamette Valley, as DEQ has proposed. These areas should apply statewide. All Oregonians should be protected.</i> |
| Response | As noted above, Senate Bill 528 does not require critical non-burn areas. DEQ has chosen to apply these areas in the Willamette Valley only, based in part on the testimony on this bill, which focused on protecting power lines in the Valley only, and based on state authority to regulate field burning under the existing smoke management program. In other areas of the state where there is field burning, it is regulated at the local county level, rather than by the state. Should it become apparent that critical non-burn areas outside of the Willamette Valley are needed in the future, DEQ can consider, in consultation with county governments, revising the rules to establish critical non-burn areas where needed. |

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| 26. Comment | <i>Critical non-burn areas should apply to all agricultural burns in the state.</i> |
| Response | Senate Bill 528 amends the state laws that apply to the field burning of grass and cereal fields only. Under the bill, the provision for critical non-burn areas is intended to apply field burning only, not all agricultural burning in general. |
| 27. Comment | <i>The proposed rules on critical non-burn areas should not, or cannot, take statutory responsibility or authority away from the EQC.</i> |
| Response | The statute gives EQC discretion on how to implement the critical non-burn area provisions. DEQ's proposed rule on critical non-burn areas will be presented to the EQC for its consideration. The EQC may or may not, adopt the rule as proposed. It is not possible for the EQC reduce its statutory authority through rules that it adopts. |
| Proposed rules should reduce air toxics, improve air quality. | |
| 28. Comment | <i>DEQ's proposed rules need to do more to improve air quality. EPA's 2008 National Scale Air Toxics Assessment ranks Linn and Lane counties as having an excess cancer rate of 30-40 cancers per million. This is too high.</i> |
| Response | As noted in response #1, the adoption of Senate Bill 528 changed state law, significantly reducing Willamette field burning, which in turn will significantly reduce the smoke from this agricultural practice, and the air toxics associated with the smoke. During the summer months, this will produce less air pollution, and resulting improvements in air quality, including Linn and Lane Counties. |
| Oppose the proposed changes related to training fires on grass seed fields. | |
| 29. Comment | <i>The proposed rules in OAR 340-266-0080 should not eliminate the regulation of grass seed fields that are used as training fires for fire-fighting personnel, nor the 35-acre limit currently in the rules.</i> |
| Response | The changes proposed in OAR 340-266-0080 are being made to ensure that DEQ field burning rules are consistent with the state law for training fire-fighting personnel. ORS 468A.020 exempts training fires set by local fire departments conducted for official purposes. These training fires are sometime necessary on grass seed fields, which after harvest can represent a significant fire hazard because of the leftover straw on the field. Some rural fire departments believe it is critical to have this training, in order to respond to any emergency. The proposed rule specifies that any training fire conducted on a grass seed field |

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| | <p>must be consistent with state law. Any training fire that is not conducted for official training purposes (i.e., illegal field burning) would be in violation of state law, and subject to enforcement action under the field burning rules.</p> <p>This exemption in state law for training fires is limited to the amount deemed by the fire department to be “necessary,” but does not allow DEQ to predetermine an acreage limit on the size of a training fire on a grass seed field. However, under ORS 476.380 and 478.960, training fires can be required to follow the times and scheduling for field burning as determined by ODA’s smoke management program. This would ensure that training fires on grass fields do not occur when weather conditions are inappropriate for burning, and result in smoke impacts.</p> <p>The rule change as proposed by DEQ did not require fire departments to obtain approval from ODA, but rather said fire departments were “strongly encouraged” to consult with ODA. Subsequently DEQ has determined that under ORS 476.380 and 478.960, fire departments must conduct their trainings pursuant to ODA daily field burning schedules. As a result, DEQ is amending OAR 340-266-0080(3) to “require” ODA approval prior to conducting any training fire on a grass field.</p> |
| <p>No additional “identified species”- greater need for alternatives to burning.</p> | |
| <p>30. Comment</p> | <p><i>The definition of identified species in OAR 340-266-0030(23) is inconsistent with Senate Bill 528, in that it can allow additional species to be identified by the Director of ODA. Only those grass species that were “identified” at the time of the legislation can be burned – no additional species can be considered.</i></p> |
| <p>Response</p> | <p>In Section 6 of Senate Bill 528, under ORS 468A.610(6)(a), it says that the burning of “steep terrain and identified species identified by the Director of Agriculture by rule” shall be 15,000 acres per year (bold emphasis added). The bill did not specify the grass species by name, only that they be identified by rule. Nor did the bill limit the species to only those identified at the time the bill was adopted. Instead, the bill simply sets a limit of 15,000 acres per year. Any changes to the identified species would have no affect on this limit. This limit is in state law and cannot be exceeded.</p> |
| <p>31. Comment</p> | <p><i>DEQ rules need to promote alternatives first. The new rules create loopholes to enable burning of additional species that the industry may claim require additional field burning without emphasizing employing alternatives to burning first.</i></p> |
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| <p>Response</p> | <p>The reduction of field burning to the limits in Senate Bill 528 reflects the continuation of an on-going reduction in burning over the years. It can be argued that this bill, along with prior legislation to phase-down field burning, has resulted in considerable use of alternatives in the Willamette Valley.</p> <p>In response to the comment to promote alternatives, the current policy in the field burning rules in OAR 340-266-0020 begins with this statement: “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...” Also in OAR 340-266-0020(2) it states “To study, develop, and encourage the use of reasonable and economically feasible alternatives to the practice of open field burning”.</p> <p>In response to the comment on creating loopholes by allowing additional field burning, as noted above, Senate Bill 528 limits “steep terrain and identified species” burning to 15,000 acres per year. This limit is in state law. No additional species identified by ODA can change this limit. There is no reason to believe the current identified species will change, or be added to. Regardless, no burning over the 15,000 acre limit would be allowed under state law.</p> |
| <p>Other comments on proposed rules.</p> | |
| <p>32. Comment</p> | <p><i>The definition of wildfire in OAR 340-266-0030 does not address wildfires that occur due to negligence or those started intentionally. This definition needs to be fully consistent with the requirements in OAR 340-266-0040(9) regarding wildfire events.</i></p> |
| <p>Response</p> | <p>DEQ agrees some clarification is needed, and has changed the definition to more closely align with the existing language in OAR 340-266-0040(9). OAR 340-266-0030(59) now reads <u>“Wildfire means an uncontrollable fire started due to a breakdown of equipment, an accident caused by human error or negligence, or any other cause, including an intentional act”</u>. OAR 340-266-0040(9) has been changed to read <u>“In the event of a “wildfire” and a grower is unable to comply with all the requirements of this Division, the grower must:”</u></p> |
| <p>33. Comment</p> | <p><i>Under the existing rule OAR 340-266-0040(6), the reference to monitoring by “radio” is outdated, needs to be changed to monitoring by other means or technology, which may not necessarily be a radio.</i></p> |
| <p>Response</p> | <p>DEQ agrees and has changed OAR 340-266-0040(6) to read <u>“must have an</u></p> |

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| | <u>operating radio receiver or other monitoring device approved by the Department”.</u> |
| 34. Comment | <i>Burning of mint fields and “pile burning” do not appear to be addressed in the proposed rules. Nor do they address more than just grass and cereal grain fields.</i> |
| Response | Under state law, the field burning rules only apply to burning associated with grass and cereal grain crops, and not mint burning. Pile burning is regulated under the field burning rules, and falls under the existing definition of “stack burning” in OAR 340-266-0030(49). The term “stack and pile burning” used frequently in the existing rules was changed to just “stack burning”, since pile burning was included in the definition of stack burning. |
| 35. Comment | <i>Why do the field burning rules focus on the summer (6/14 to 9/14 specifically), when there is burning at other times of year.</i> |
| Response | The field burning season in the Willamette Valley takes place in the summer months only. This burning is conducted after seed harvest, typically in June and part of July, and usually ends late summer/early fall. Other types of agricultural burning, besides field burning, can occur at other times of year. This burning is not regulated under the field burning rules, and not addressed as part of this rulemaking. |
| 36. Comment | <i>The definition of a two-hour smoke intrusion was raised from 4 to 5 b-scat units for no apparent reason.</i> |
| Response | This was primarily a housekeeping change. The definition in OAR 340-266-0030(6) refers to how a two-hour smoke intrusion in the Eugene-Springfield area counts as one hour towards the performance standard in OAR 340-266-0070(7). Deleted was the 4 b-scat level intrusion that occurred outside of the field burning season (9/15-6/15). Retained was the 5 b-scat level intrusion applied to intrusions during the season (6/16-9/14). This means that the 5 b-scat level intrusion now applies year-round. DEQ does not consider this to be significant, as burning in the south part of the Willamette Valley is prohibited, starting in 2010, except for the possibility of limited emergency burning. The chance of any field burning smoke impacts in the Eugene-Springfield area are extremely unlikely. |

| List of Commenters | | | | |
|---------------------------|--------------------------|-------------------------------------|-------------------------------|--------------------|
| | Name | Affiliation | Comment | Submit Date |
| 1. | Troy Hadley | Grass seed farmer | oral testimony | 4/26/2010 |
| 2. | Lucas Rue | Grass seed farmer | oral and written | 4/26/2010 |
| 3. | Roger Beyer | Oregon Seed Council | oral testimony | 4/26/2010 |
| 4. | Dan Galpern ¹ | Western Environmental Law Center | oral and written ¹ | 4/27/2010 |
| 5. | Merlyn Hough | Lane Regional Air Protection Agency | oral testimony | 4/27/2010 |
| 6. | Holly Higgins | Private Citizen | oral testimony ¹ | 4/27/2010 |
| 7. | Charlie Tebbutt | Private Citizen | oral testimony ¹ | 4/27/2010 |
| 8. | Larry Dunlap | Physician | email | 4/27/2010 |
| 9. | Dave Fiskum | Hewlett Packard | email with letter | 4/29/2010 |
| 10. | Rep. Paul Holvey | State Representative District 8 | email | 4/30/2010 |
| 11. | Senator Floyd Prozanski | State Senator District 4 | email | 4/30/2010 |
| 12. | Jennifer Shmikler | Oregon Farm Bureau Federation | letter | 4/30/2010 |
| 13. | Josh Vincent | Oregon Toxics Alliance | letter ² | 5/21/2010 |
| 14. | Lisa Arkin | Oregon Toxics Alliance | letter ² | 5/21/2010 |
| 15. | John Jordan-Cascade | Oregon Toxics Alliance | letter ² | 5/21/2010 |
| 16. | Alan Haggard | Private Citizen | email | 5/13/2010 |
| 17. | Alan Kardoff | Private Citizen | email | 5/16/2010 |
| 18. | Alan Wasner | Private Citizen | email | 5/12/2010 |
| 19. | Aletta Kraan | Private Citizen | email | 5/19/2010 |
| 20. | Alex Dracobly | Private Citizen | email | 5/21/2010 |
| 21. | Alicia Vazquez | Private Citizen | email | 5/13/2010 |
| 22. | Alisha Nickols | Private Citizen | email | 5/15/2010 |
| 23. | Allen Hancock | Private Citizen | email | 5/14/2010 |
| 24. | Alma Daughtry | Private Citizen | email | 5/13/2010 |
| 25. | Amber Kelsey | Private Citizen | email | 5/13/2010 |
| 26. | Andrew Black | Private Citizen | email | 5/18/2010 |
| 27. | Andrew Heugel | Private Citizen | email | 5/12/2010 |
| 28. | Ann Cawley | Private Citizen | email | 5/18/2010 |
| 29. | Anneke Hut | Private Citizen | email | 5/12/2010 |
| 30. | Anthony Serrano | Private Citizen | email | 5/14/2010 |
| 31. | Arild Warud | Private Citizen | email | 5/13/2010 |
| 32. | Arthur Poletti | Private Citizen | email | 5/19/2010 |
| 33. | Barbara McNamara | Private Citizen | email | 5/17/2010 |

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|-----|-------------------------|-----------------|-------|-----------|
| 34. | Beth Patterson | Private Citizen | email | 5/12/2010 |
| 35. | Beth Stephens | Private Citizen | email | 5/13/2010 |
| 36. | Birdie B. | Private Citizen | email | 5/14/2010 |
| 37. | Bob Ramczyk | Private Citizen | email | 5/13/2010 |
| 38. | Brian Longley | Private Citizen | email | 5/12/2010 |
| 39. | Bruce Combs | Private Citizen | email | 5/12/2010 |
| 40. | Bryan D. Freehling | Private Citizen | email | 5/13/2010 |
| 41. | Caleb L. | Private Citizen | email | 5/18/2010 |
| 42. | Carla Compton | Private Citizen | email | 5/16/2010 |
| 43. | Carol Handras | Private Citizen | email | 5/14/2010 |
| 44. | Carole Hagen | Private Citizen | email | 5/12/2010 |
| 45. | Cary Thompson | Private Citizen | email | 5/13/2010 |
| 46. | Casey Brisbin | Private Citizen | email | 5/13/2010 |
| 47. | Cecil Doyle | Private Citizen | email | 5/17/2010 |
| 48. | Charles McLachlan | Private Citizen | email | 5/12/2010 |
| 49. | Charlotte Sahnou | Private Citizen | email | 5/12/2010 |
| 50. | Cher Clarke | Private Citizen | email | 5/12/2010 |
| 51. | Cheryl Fish | Private Citizen | email | 5/13/2010 |
| 52. | Chris | Private Citizen | email | 5/12/2010 |
| 53. | Christianna Skoczek | Private Citizen | email | 5/14/2010 |
| 54. | Christopher David Moore | Private Citizen | email | 5/12/2010 |
| 55. | Colin Lamb | Private Citizen | email | 5/12/2010 |
| 56. | Connor Hocking | Private Citizen | email | 5/13/2010 |
| 57. | Cristi Sturgill | Private Citizen | email | 5/12/2010 |
| 58. | Cynthia Wasner | Private Citizen | email | 5/13/2010 |
| 59. | Cynthia Woodcock | Private Citizen | email | 5/13/2010 |
| 60. | Dan Crowson | Private Citizen | email | 5/12/2010 |
| 61. | Daniel McHenry | Private Citizen | email | 5/16/2010 |
| 62. | Darcie Monroe | Private Citizen | email | 5/14/2010 |
| 63. | Darlene Davis | Private Citizen | email | 5/12/2010 |
| 64. | Darrell Jones | Private Citizen | email | 5/13/2010 |
| 65. | David Barrymore | Private Citizen | email | 5/13/2010 |
| 66. | David Steiner | Private Citizen | email | 5/16/2010 |
| 67. | De Andre Nickens | Private Citizen | email | 5/15/2010 |
| 68. | Deana Palmer | Private Citizen | email | 5/13/2010 |
| 69. | Debbie Geno | Private Citizen | email | 5/12/2010 |
| 70. | Denise Frolov | Private Citizen | email | 5/13/2010 |
| 71. | Denise L. | Private Citizen | email | 5/13/2010 |
| 72. | Dian Wright | Private Citizen | email | 5/13/2010 |
| 73. | Diana Rempe | Private Citizen | email | 5/12/2010 |
| 74. | Diane Gandee Sorbi | Private Citizen | email | 5/19/2010 |
| 75. | Dianne Ensign | Private Citizen | email | 5/13/2010 |

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|------|----------------------------|-----------------|-------|-----------|
| 76. | Donald Gudehus | Private Citizen | email | 5/13/2010 |
| 77. | Dr. Mowse | Private Citizen | email | 5/12/2010 |
| 78. | Drew Donelson | Private Citizen | email | 5/14/2010 |
| 79. | Ellaine Lurie-Janicki CPhT | Private Citizen | email | 5/13/2010 |
| 80. | Ellen Singer | Private Citizen | email | 5/12/2010 |
| 81. | Erin Ely | Private Citizen | email | 5/13/2010 |
| 82. | Erin Robinson | Private Citizen | email | 5/12/2010 |
| 83. | Evangelia Mandthoyianni | Private Citizen | email | 5/13/2010 |
| 84. | Gail Costic | Private Citizen | email | 5/15/2010 |
| 85. | Gail Dair | Private Citizen | email | 5/12/2010 |
| 86. | Gary Fields | Private Citizen | email | 5/13/2010 |
| 87. | Gavin McComas | Private Citizen | email | 5/21/2010 |
| 88. | George Martin | Private Citizen | email | 5/13/2010 |
| 89. | Glenn Gillis | Private Citizen | email | 5/12/2010 |
| 90. | Gregory Esteve | Private Citizen | email | 5/14/2010 |
| 91. | Gregory Kubera | Private Citizen | email | 5/15/2010 |
| 92. | Gwyneth Iredale | Private Citizen | email | 5/13/2010 |
| 93. | Hannah H. | Private Citizen | email | 5/13/2010 |
| 94. | Hannah Haynes | Private Citizen | email | 5/21/2010 |
| 95. | Henriette Matthijssen | Private Citizen | email | 5/15/2010 |
| 96. | Henry/Norma Jean Germond | Private Citizen | email | 5/20/2010 |
| 97. | Hindery Derrick | Private Citizen | email | 5/14/2010 |
| 98. | Ines Vasquez | Private Citizen | email | 5/20/2010 |
| 99. | Isobella Merritts | Private Citizen | email | 5/17/2010 |
| 100. | Jack Casey | Private Citizen | email | 5/13/2010 |
| 101. | Jake Abrahams | Private Citizen | email | 5/12/2010 |
| 102. | Jake Wolfhart | Private Citizen | email | 5/15/2010 |
| 103. | James M Nordlund | Private Citizen | email | 5/14/2010 |
| 104. | James Sullivan | Private Citizen | email | 5/13/2010 |
| 105. | Jamie Reygale | Private Citizen | email | 5/12/2010 |
| 106. | Jan Shea | Private Citizen | email | 5/12/2010 |
| 107. | Janet Fraser | Private Citizen | email | 5/13/2010 |
| 108. | Janine Offutt | Private Citizen | email | 5/15/2010 |
| 109. | Jason Green | Private Citizen | email | 5/13/2010 |
| 110. | Jennifer Hagens | Private Citizen | email | 5/13/2010 |
| 111. | Jennifer Hall | Private Citizen | email | 5/13/2010 |
| 112. | Jessica Metzger | Private Citizen | email | 5/14/2010 |
| 113. | Jim Goes | Private Citizen | email | 5/13/2010 |
| 114. | Jim T. | Private Citizen | email | 5/12/2010 |
| 115. | Joanne Skirving | Private Citizen | email | 5/13/2010 |
| 116. | Joel Clasemann | Private Citizen | email | 5/14/2010 |
| 117. | John Gear | Private Citizen | email | 5/13/2010 |

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|------|------------------------|-----------------|-------|-----------|
| 118. | John Sundquist | Private Citizen | email | 5/21/2010 |
| 119. | Jonathan Snow | Private Citizen | email | 5/13/2010 |
| 120. | Jory Masterman | Private Citizen | email | 5/14/2010 |
| 121. | Judith Raiskin | Private Citizen | email | 5/15/2010 |
| 122. | Judy Coleman | Private Citizen | email | 5/12/2010 |
| 123. | Julie Van Niekerk | Private Citizen | email | 5/16/2010 |
| 124. | Karen Ericson | Private Citizen | email | 5/14/2010 |
| 125. | Kathleen Pequeno | Private Citizen | email | 5/12/2010 |
| 126. | Kathleen Wissensz | Private Citizen | email | 5/14/2010 |
| 127. | Katja Kohler-Gause | Private Citizen | email | 5/13/2010 |
| 128. | Katrin for the animals | Private Citizen | email | 5/14/2010 |
| 129. | Kay Hartsock | Private Citizen | email | 5/13/2010 |
| 130. | Keith Baynard | Private Citizen | email | 5/12/2010 |
| 131. | Kelly Cleveland | Private Citizen | email | 5/16/2010 |
| 132. | Kevin Silvey | Private Citizen | email | 5/12/2010 |
| 133. | Kim Carter | Private Citizen | email | 5/13/2010 |
| 134. | Kimberly Anne | Private Citizen | email | 5/14/2010 |
| 135. | Laura Broenink | Private Citizen | email | 5/18/2010 |
| 136. | Laura M. Ohanian | Private Citizen | email | 5/14/2010 |
| 137. | Linda London | Private Citizen | email | 5/12/2010 |
| 138. | Lisa Salazar | Private Citizen | email | 5/19/2010 |
| 139. | Lonnie Walker | Private Citizen | email | 5/17/2010 |
| 140. | Lora Byxbe | Private Citizen | email | 5/13/2010 |
| 141. | Lori Weber | Private Citizen | email | 5/14/2010 |
| 142. | Lyn Cornell | Private Citizen | email | 5/12/2010 |
| 143. | Lynn Miller | Private Citizen | email | 5/12/2010 |
| 144. | Maria F. | Private Citizen | email | 5/20/2010 |
| 145. | Marilyn Kamna | Private Citizen | email | 5/15/2010 |
| 146. | Marilyn Miller | Private Citizen | email | 5/17/2010 |
| 147. | Marissa Abramovic | Private Citizen | email | 5/12/2010 |
| 148. | Marshall Garvey | Private Citizen | email | 5/13/2010 |
| 149. | Mary Ann Thompson | Private Citizen | email | 5/13/2010 |
| 150. | Mary Wall | Private Citizen | email | 5/13/2010 |
| 151. | Matt Washam | Private Citizen | email | 5/21/2010 |
| 152. | Maya Gee | Private Citizen | email | 5/13/2010 |
| 153. | Mervi Rantala | Private Citizen | email | 5/16/2010 |
| 154. | Michelle Bexelius | Private Citizen | email | 5/17/2010 |
| 155. | Michelle R. | Private Citizen | email | 5/15/2010 |
| 156. | Mickael Mann | Private Citizen | email | 5/13/2010 |
| 157. | Mike Moore | Private Citizen | email | 5/13/2010 |
| 158. | Mike Schena | Private Citizen | email | 5/13/2010 |
| 159. | Naoko Idesawa | Private Citizen | email | 5/12/2010 |

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|------|-------------------------|-----------------|---------------|-----------|
| 160. | Natalie Eggert | Private Citizen | email | 5/12/2010 |
| 161. | Natasha Leite de Moura | Private Citizen | email | 5/12/2010 |
| 162. | Nathan Svejcar | Private Citizen | email | 5/12/2010 |
| 163. | Nyack Clancy | Private Citizen | email | 5/12/2010 |
| 164. | Penni Norman | Private Citizen | email | 5/13/2010 |
| 165. | Pete Giacca | Private Citizen | email | 5/16/2010 |
| 166. | Randall Gicker | Private Citizen | email | 5/12/2010 |
| 167. | Rick Moon | Private Citizen | email | 5/15/2010 |
| 168. | Rita Leone | Private Citizen | email | 5/13/2010 |
| 169. | Robert Hewlett | Private Citizen | email | 5/14/2010 |
| 170. | Robyn Werhan | Private Citizen | email | 5/14/2010 |
| 171. | Ron Avila | Private Citizen | email | 5/15/2010 |
| 172. | Rosa Waggoner, FNP-C | Private Citizen | letter | 5/17/2010 |
| 173. | Sanjeev Rai | Private Citizen | email | 5/13/2010 |
| 174. | Sara Gaspar | Private Citizen | email | 5/13/2010 |
| 175. | Sara Thomas | Private Citizen | email | 5/12/2010 |
| 176. | Sarah Johnson | Private Citizen | email | 5/12/2010 |
| 177. | Sarah Wylie | Private Citizen | email | 5/12/2010 |
| 178. | Savina Veselinova | Private Citizen | email | 5/13/2010 |
| 179. | Shirley Marc | Private Citizen | email | 5/13/2010 |
| 180. | Soodle Billy | Private Citizen | email | 5/14/2010 |
| 181. | Stacey Pierce | Private Citizen | email | 5/13/2010 |
| 182. | Stacy Stjern | Private Citizen | email | 5/12/2010 |
| 183. | Star Star | Private Citizen | email | 5/16/2010 |
| 184. | Susan Armistead | Private Citizen | email | 5/13/2010 |
| 185. | Susan Forester | Private Citizen | email | 5/13/2010 |
| 186. | Susan Harlan | Private Citizen | email | 5/14/2010 |
| 187. | Suzanned Gascoyne | Private Citizen | email | 5/13/2010 |
| 188. | Tamara Williams | Private Citizen | email | 5/13/2010 |
| 189. | Therese Osborne | Private Citizen | email | 5/13/2010 |
| 190. | Thomas Shelton | Private Citizen | email | 5/15/2010 |
| 191. | Tim Davis | Private Citizen | email | 5/12/2010 |
| 192. | Tim Redfern | Private Citizen | email | 5/19/2010 |
| 193. | Tom Stilwell | Private Citizen | email | 5/16/2010 |
| 194. | Vernon Huffman | Private Citizen | email | 5/15/2010 |
| 195. | Virginia Lionatto | Private Citizen | email | 5/13/2010 |
| 196. | Virginia Oram, ND | Private Citizen | email | 5/13/2010 |
| 197. | Wally Larsen | Private Citizen | email | 5/12/2010 |
| 198. | William Looney | Private Citizen | email | 5/21/2010 |
| 199. | Yaney MacIver | Private Citizen | email | 5/12/2010 |
| 200. | Yrna Miryana | Private Citizen | email | 5/12/2010 |
| 201. | 104 others ¹ | (see list) | in support of | 4/30/2010 |

| | | | | |
|------|------------------------|------------|--|-----------|
| | | | above letter ¹ | |
| 202. | 83 others ² | (see list) | in support of above letter ² | 5/21/2010 |

¹ Submitted written comments on the behalf of 104 persons and organizations. See letter submitted by Dan Galpern, April 30, 2010. List of names available upon request.

² Submitted written comments on the behalf of 83 persons and organizations. See letter submitted by Oregon Toxics Alliance, May 21, 2010. List of names available upon request.

State of Oregon
Department of Environmental Quality

Memorandum

Date: May 5, 2010

To: Environmental Quality Commission
From: Brian Finneran, DEQ Air Quality Division
Subject: Hearing Officer's report on public hearings

Title of proposal: Willamette Valley field burning rule revisions

Hearing dates and time: April 26 and 27, 2010. 6 p.m.

Hearing locations: 1. Salem OR, State Fairgrounds and Expo Center
2. Eugene OR, State Office Building

DEQ held two public hearings on the proposed rulemaking at the locations noted above. These hearings were held jointly with the Oregon Department of Agriculture. The following is a summary of each of these hearings.

1. April 26, 2010, Oregon State Fair and Expo Center, Cascade Hall, 2330 17th Street NE, Salem. The hearing officers were Brian Finneran from DEQ and Jim Johnson from ODA. Also present were Anne Friend and John Byers from ODA.

Brian Finneran and John Byers gave a joint presentation on the changes to the Willamette Valley field burning rules being proposed by both agencies. A question and answer period followed the presentation.

Brian Finneran opened the formal hearing at 6:57 p.m. and he stated the hearing was being recorded and testimony would become part of the public record for the rulemaking. He explained his role and Jim Johnson's role was to take public testimony and prepare a report summarizing the written and verbal comments. He asked that people interested in providing oral testimony fill out a witness registration form, and would call people to testify in the order they turned in the form. He reminded the audience that the deadline date for receipt of written comments on the proposed rules was Friday, April 30, 2010, at 5 p.m. He stated that after reviewing the comments, DEQ and ODA may consider revisions to the proposed rules. He added that the department's final recommendation for rule adoption will be made at the EQC meeting scheduled for August 18-19, 2010, at a location to be determined, and that EQC can use its own discretion in deciding whether to adopt all, part or none of the proposed rules, postpone adoption, or hold

additional public hearings. He also mentioned that ODA rule adoption would be made before June 30, 2010.

- **Summary of Oral Testimony:**

Four persons turned in witness registration forms. One chose not to testify. The remaining three testified in the following order.

Troy Hadley, Farmer

Troy said he is grass seed farmer up in the Silverton Hills areas near Drakes Crossing, and mostly grows fine fescue. He said he had some concerns about the critical non-burn area restriction of 150 feet under power lines, and would prefer it to be directly under (i.e., a smaller buffer area) under the lines. He said the 500-foot buffer around schools is acceptable, as long as it does not apply when school is not in session, as proposed. He said there needs to be an easy way for farmers who need to do emergency burning to be approved, a clear application process so that farmers can understand the requirements, and would like to see emergency burning allowed to address pests, in addition to insect and disease problems.

Lucas Rue, Victor Point Farms

Lucas said he represents Victor Point Farms, a grass seed farm outside of Salem, which grows Creeping Red Fescue and Chewings Fescue, both of which require open field burning in order to maintain a healthy and viable seed crop. He said they have grass seed fields adjacent to elementary school grounds, and feel that as long as school is not in session while they burn, the burning of these crops should be permitted. He added that during the school year burning should be permitted after hours, just as long as all present individuals are given proper notification before burning is initiated.

Roger Beyer, Oregon Seed Council

Roger introduced himself as the representative for the Oregon Seed Council. He said that under the existing rule section on General Requirements, the reference to monitoring by “radio” is outdated, needs to be changed to monitoring by other means or technology, which may not necessarily be a radio. He stated that the proposed definition of critical non-burn areas is inconsistent with the statute, and should just quote the statutory language. He added that the provision for a 75-foot buffer on either side of centerline power lines is too wide, and inconsistent with statute, which says only “under power lines”. He also said that for the critical non-burn area around schools, there needs to be dates and times added to the rules for when the school is not “in session”, as well as allow for burning after school and on weekends. Roger pointed out two typos in ODA rules – one on the burning fee for propane flaming, which should be \$4 not \$24 per acre, and the other on the burning fee for outside the Willamette Valley, which should be \$8 not \$48 per acre. Regarding DEQ’s proposed emergency burning rule, he stated that subsection OAR 340-266-0065 (4)(c) that addresses economic hardship and the financial impact on the grower should be deleted. He explained if a grower can’t grow grass seed on a field profitably due to a disease or insect problem, it should not matter from an economic standpoint how many other fields the grower has. He added that if growers are going to use

emergency burning, the rules need to be as less bureaucratic as possible, and this section alone makes it very cumbersome and unlikely any grower will seek emergency burning. Finally, on the proposed registration fees for emergency burning, he believes that if a grower registers 100 acres but is only approved for 20 acres, he should have to pay for the actual acres approved by DEQ for emergency burning.

There was no other testimony provided. The hearing adjourned at 7:06 p.m.

2. April 27, 2010, Oregon State Office Building, Willamette Conference Room, 165 East 7th Avenue, Eugene. The hearing officers were Brian Finneran from DEQ and Jim Johnson from ODA. Also present was John Byers from ODA.

Brian Finneran and John Byers gave a joint presentation on the changes to the Willamette Valley field burning rules being proposed by both agencies. A question and answer period followed the presentation.

Brian Finneran opened the formal hearing at 7:18 p.m. and stated the hearing was being recorded and testimony would become part of the public record for the rulemaking. He explained his role and Jim Johnson's role was to take public testimony and prepare a report summarizing the written and verbal comments. He asked that people interested in providing oral testimony fill out a witness registration form, and would call people to testify in the order they turned in the form. He reminded the audience that the deadline date for receipt of written comments on the proposed rules was Friday, April 30, 2010, at 5 p.m. He stated that after reviewing the comments, DEQ and ODA may consider revisions to the proposed rules. He added that the department's final recommendation for rule adoption will be made at the EQC meeting scheduled for August 18-19, 2010, at a location to be determined, and that the EQC can use its own discretion in deciding whether to adopt all, part or none of the proposed rules, postpone adoption, or hold additional public hearings. He also mentioned that ODA rule adoption would be made before June 30, 2010.

- Summary of Oral Testimony:

Four persons turned in witness registration forms, and testified in the following order.

Dan Galpern, Attorney, Western Environmental Law Center

Dan said he was the co-director of the Campaign to End Field Burning, and a co-author of the study "Field Burning Exposure Air Quality and Health Impacts", published in March 2009, as well as a member of DEQ's field burning advisory committee. He stated that the proposed field burning rules are insufficiently protective of public health, and make emergency burning far too easy and not as stringent as the statute requires. He pointed out that the proposed rules fail to mention the prohibition on field burning specified in Senate Bill 528. On emergency burning, he said that Senate Bill 528 forbids emergency burning unless there is a finding by the EQC of extreme hardship that outweighs the danger to public health and safety, and that the proposed rules provide no standard for making this determination. He said the law requires the EQC to

make this decision, rather than DEQ, and that by delegating the decision to DEQ, circumvents the need to provide public notice and opportunity for comment on emergency burning petitions. He added that the rule provision which allows a grower to show extreme hardship by documenting a seed germination rate more than 10% under the market standard is absurd and does not meet the stringency required by statute. He said the proposed rules, in determining extreme hardship, need to be based on a showing of extreme economic hardship, and consider the financial circumstances of each grower. He gave an example of a large grower who owns several fields, and another who owns only two fields, where the smaller grower could be much more adversely impacted by having one infected field than the larger grower. Dan stated that the proposed rules must define "extreme hardship" in concrete terms. He suggested, as an example, that the rules could define extreme hardship as economic loss that causes a grower to file for bankruptcy. He said when the legislature used the term "extreme", it meant extreme, and nothing less. On the danger to public health, the field by field burn plan required for emergency burning is a positive step only if it has realistic safeguards. The proposed rule only considers persons living with one-quarter mile of the field, which is grossly inadequate. He pointed out that in his field burning health study (cited above) there can be significant health impacts from the smoke more than five miles away from the field that is burned. Finally, on the proposed critical non-burn areas, the statute authorizes these areas be established to protect public health. He said that while it is good that the proposed rules prohibit burning near schools and hospitals, the proposed 500-foot buffer is grossly inadequate. He encouraged using basic science and meteorological factors to identify the appropriate distance to protect health, and suggested that at least five miles be considered, rather than 500 feet. He added that the provision to prohibit burning only when schools are in session is entirely inadequate, and strongly recommended the rule address whenever children are likely to be present, and to only allow burning when there is reasonable assurance none are present. Finally, he said that the statutes intend critical non-burn areas to apply statewide, not just the Willamette Valley, as proposed by DEQ. This limitation to the Valley is both inequitable and senseless, in that the same protection is needed in all areas of the state.

Merlyn Hough, Lane Regional Air Protection Agency

Merlyn began by pointing out that in November 2006, the LRAPA Board of Directors requested Lane County legislators revisit the issue of Willamette Valley field burning and consider legislation to eliminate the practice at the earliest possible date. LRAPA supported bills in the 2007 and 2009 legislative sessions to phase out field burning. In 2009, Merlyn served on the field burning advisory committee to review the proposed field burning rule revisions. He said the proposed rules appear to be consistent with SB 528 and a reasonable approach to implement that bill. He stated that the section on emergency open burning is of particular interest to LRAPA, since this burning could be allowed in the southern Willamette Valley, and is especially interested in OAR 340-266-0065 (7)(d), related to how it will be determined if an extreme hardship outweighs the danger to public health and safety. Merlyn recommended a few minor wording changes (underlined) to the second sentence of OAR 340-266-0065(4)(b)(C): "This shall include whether any alternatives to burning, such as crop rotations or chemical treatments, would be similarly or more effective in eradicating the problem."

Holly Higgins, Private Citizen

Holly said she is a private citizen and lives in Harrisburg in Linn County. She said that smaller communities like Harrisburg have in the past not been protected from field burning smoke in the same manner as the larger communities like Eugene, yet there are 50,000-70,000 residents in the south Valley that need the same protection. She pointed out that research has shown short-term exposure to field burning smoke is dangerous to public health, and in previous summers has been personally impacted by field burning smoke. She expressed concerns that the proposed emergency burning rule will not adequately protect the public from smoke and is less stringent than what Senate Bill 528 intended. She said she supports the testimony submitted by Dan Galpern, including the need to define the term “extreme hardship”. She urged DEQ and ODA to “champion” the rural population by adopting rules that are more protective of public health.

Charlie Tebbutt, Private Citizen

Charlie mentioned that he worked with Dan Galpern as co-director of the Campaign to End Field Burning. He added that he has been personally impacted by field burning smoke many times, and his child has asthmatic conditions and has been exposed to this smoke as well. He stated that the language in the policy statement in OAR 340-266-0020 that refers to a maximum level of burning with a minimum level of smoke impact is outdated, and needs to be changed to reflect the new emphasis in SB 528 that public health is not to be compromised. He said he supports the testimony submitted by Dan Galpern, including the need to define “extreme hardship” in the rules. He added that any field burning is a public health threat unless special precautions are taken, and that even then, there is no guarantee health can be fully protected. He stated that the definition in OAR 340-266-0030(15) needs to reflect the fact that a health threat is presumed, and therefore the grower must show how burning a field will not pose a health threat. He pointed out in the definition of identified species in OAR 340-266-0030(23) should be changed, as it unlawfully allows additional species to be identified by the Director of ODA, which is inconsistent with SB 528. In the definition of wildfire in OAR 340-266-0030(58), he stated this definition needs to be expanded to address negligently started fires and intentional burning as well. On the proposed emergency burning rule in OAR 340-266-0065 (4)(b)(C), seed purity is too narrow of a focus in determining extreme hardship, and other alternatives to burning need to be emphasized, such as crop rotation. He said in determining extreme hardship, there should be a provision that no other alternatives are available, and added that rather than making it optional for growers to get an independent assessment by a certified crop scientist, it should be required. He also supports requiring all emergency burning petitions to be posted on DEQ’s website within a reasonable time, notifying the people on ODA’s field burning notification list, and specifying location of the field and who the owner, so that the public has the opportunity to comment on each petition and the potential threat to their health. Charlie stated that the intent of extreme hardship language in SB 528 is not just to deal with the hardship of one grower, but to the grass seed industry as a whole, and was not intended to make it routine to allow emergency burning up to 2,000 acres every year. On critical non-burn area rule provisions, he pointed out that the 75 foot no-burn area on either side of the power transmission line is not consistent with testimony from the Hewlett-Packard representative on SB 528, who called for a much wider buffer to protect power lines. Similarly, Charlie questioned the 500-foot buffer being proposed for schools and hospitals as being arbitrary, and not based on potential impacts on public health. On OAR

340-266-0080 regarding training fires on grass seed fields, he supports continuing to regulate these fields under the field burning program, to prevent illegal field burning, and that the current 35 acre limit on training fires should remain in the rules and not be deleted.

There was no other testimony provided. The hearing adjourned at 8:10 p.m.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Relationship to Federal Requirements

Field Burning Rule Revisions

This rulemaking revises DEQ field burning rules to incorporate recent changes to the field burning statutes.

Answers to the following questions identify how the proposed rulemaking relates to federal requirements and the justification for differing from, or adding to, federal requirements. This statement is required by OAR 340-011-0029(1).

1. Is the proposed rulemaking different from, or in addition to, applicable federal requirements? If so, what are the differences or additions?

The proposed rulemaking amends existing DEQ rules governing field burning in Oregon to implement changes to Oregon state law (ORS 468A.550 through 468A.620) as a result of the recently adopted legislation, which reduces field burning in some parts of the Willamette Valley, and eliminates it in others. This rulemaking includes miscellaneous minor changes to better align DEQ and Oregon Department of Agriculture field burning rules.

There are no directly applicable federal requirements to regulate field burning. However, DEQ's current field burning rules were originally adopted to meet standards under the federal Clean Air Act designed to protect air quality. DEQ submitted them to the Environmental Protection Agency as an addition to the State of Oregon Clean Air Act State Implementation Plan, per OAR 340-200-0040. As such, the field burning rules are federally enforceable. If adopted, DEQ will submit the revised rules to EPA as a revision to the SIP.

The current field burning rules allow up to 40,000 acres per year of general open field burning in the Willamette Valley, and up to 25,000 acres per year for burning certain fire-dependent grass species and fields on steep terrain. The rules contain requirements for managing this burning to protect air quality by using weather forecasting and other smoke management tools.

As noted above, this proposed rulemaking implements Senate Bill 528, adopted by the Oregon Legislature in 2009. The effect of this legislation is to eliminate the 40,000 acre limit for general field burning by 2010, reduce the 25,000 acre limit for certain fire-dependent grass species and steep terrain to 15,000 acres per year, and phase-out other types of field burning known as propane flaming and stack burning by 2013. An exception is allowed for up to 2,000 acres per year of emergency burning to address serious disease and pest outbreaks. It also doubles the fees for the remaining burning, and establishes new "critical non-burn areas" on fields with power transmission lines.

By proposing these rule revisions to implement this legislation, DEQ will be amending its federally enforceable field burning rules and significantly reducing the amount of burning previously allowed. The proposed changes will provide greater protection and improvement of air quality in the Willamette Valley and surrounding region through major reductions in the levels of particulate matter and other pollutants in smoke that can cause health problems.

2. If the proposal differs from, or is in addition to, applicable federal requirements, explain the reasons for the difference or addition (including as appropriate, the public health, environmental, scientific, economic, technological, administrative or other reasons).

Many of the proposed rule revisions are nondiscretionary revisions required to implement changes to state law from legislation that eliminates most field burning, and will help DEQ meet the objective of protecting air quality under the federal Clean Air Act. The discretionary rules proposed in this rulemaking are also needed to establish the criteria and procedures for administering the exception for emergency burning and defining critical non-burn areas. The emergency burning rules will protect farm value by eliminating certain disease outbreak and insect infestation, and critical non-burn areas proposed in the rules will protect power lines from disruption from field burning, which can cause economic losses to businesses that rely on a stable power supply.

3. If the proposal differs from, or is in addition to, applicable federal requirements, did DEQ consider alternatives to the difference or addition? If so, describe the alternatives and the reason(s) they were not pursued.

In addition to adopting provisions required by Senate Bill 528, such as acreage limitations, this rulemaking is proposing discretionary requirements to implement provisions of the bill related to emergency burning and critical non-burn areas. In evaluating how to implement these discretionary provisions, DEQ considered the following alternatives and options.

For emergency burning, the bill allows the Environmental Quality Commission to approve such burning where there is an “extreme hardship due to disease outbreak or insect infestation,” and where the burning “outweighs the dangers to public health and safety.” The bill also allows the commission to assess fees for emergency burning. As part of this rulemaking, DEQ is proposing a process by which a grower can submit a petition for emergency burning by providing documentation on the severity of the disease or insect outbreak, and economic hardship caused by the reduced market value of the infected seed. DEQ believed balancing these two considerations was important part of determining what represents an extreme hardship, as required by the bill. An option to require third-party documentation from an agricultural extension agent or other expert was considered by DEQ, but rejected in favor of making this optional for the grower. In developing this rule, DEQ’s goal was to establish a timely process for evaluating emergency burning petitions that satisfies the stringency in Senate Bill 528 and is also practical and efficient to implement. In order to meet this goal and expedite the approval process, the rule proposes that EQC would delegate the authority to approve or deny emergency burn applications to DEQ’s director.

In order to determine if the burning “outweighs the dangers to public health and safety,” DEQ determined the best option was to first determine the severity and economic hardship of each

petition, and if approved, then apply the most stringent smoke management controls by requiring special burn authorization on the day of the burn, and an individual burn plan for the field, that identifies areas near the field that require special protection, and the optimum smoke management conditions for burning the field to avoid smoke impacts on the public. An alternative to requiring burn plans was to rely on the existing smoke management program, and conduct the emergency burning the same manner as regular field burning. This was rejected due to the need to provide greater smoke protection and lower the risk or danger to the public, based on the language noted above in Senate Bill 528, for approving emergency burning. Another option to use computer modeling to predict possible smoke impacts, instead of requiring burn plans, was also rejected due to the limitations in this method to accurately predict plume behavior and downwind smoke impacts. Applying the most stringent smoke management controls for each emergency burn field is expected to be more effective at avoiding unwanted smoke impacts.

DEQ is proposing fees for emergency burning at the same amount required under statute for the remaining field burning (i.e., the 15,000 acre limit for fire-dependent grass species and fields on steep terrain). The option of not charging fees was considered, but rejected due to staff time and resources needed to review emergency burning petitions, and costs related to weather forecasting and evaluating the best smoke management conditions for burning.

For critical non-burn areas, the bill specifies they “may include, but are not limited to, areas under power transmission lines.” As part of this rulemaking, the proposed definition of a critical non-burn area for power transmission lines in the Willamette Valley prohibits burning in a 150-foot wide area under industrial power lines of 230kV or greater. Both smaller and larger areas were considered, but rejected, based on smoke management program staff recommendation a 150-foot area would provide this protection. In cases where a field is intersected by a power line, the proposed rule would require the field be registered as two fields. This would further protect power lines by controlling the burning and reducing the chance that part of the field would cause an unwanted smoke impact.

In addition to power lines, DEQ is proposing to establish critical non-burn areas within 500 feet of any school, airport or hospital, based on input from DEQ’s advisory committee. When schools are not in session, and when small airports do not have regularly scheduled flights, field burning would be allowed in these areas. DEQ considered limiting this rule to only power transmission lines, and relying on existing field burning rules to protect schools, hospitals, and airports from smoke impacts. However, current rules restrict burning but do not prohibit it near these areas, and DEQ agreed with the advisory committee that an extra margin of safety is needed. DEQ also considered a broader approach to address additional areas, but determined that existing field burning rules already prohibit burning near most major highways, large population areas, and major airports.

Finally, under this rule proposal, DEQ is proposing to apply the critical non-burn area requirement inside the Willamette Valley, specifically the North Valley, where the 15,000 acres of identified species and steep terrain fields is allowed, and valley-wide, where emergency burning can occur. DEQ lacks the infrastructure and resources to implement this provision outside the Willamette Valley in areas where field burning is administered locally by county. DEQ plans to conduct further investigation into the legal and practical issues associated with this matter and reconsider the extent of the critical non-burn restrictions at a later time.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 340

Proposed Rulemaking

STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT

DEQ Willamette Valley Field Burning Rule Revisions

This form accompanies a Notice of Proposed Rulemaking

| | |
|---|---|
| Title of Proposed Rulemaking | Willamette Valley Field Burning Rule Revisions Amends: OAR 340-266-0010 through OAR 340-266-0130 (Field Burning Rules), and OAR 340-200-0040 (State of Oregon Clean Air Act Implementation Plan). New rules: OAR 340-266-0065 (Emergency Burning), OAR 340-266-0075 (Burning Restrictions and Prohibitions), and OAR 340-266-0140 (Burning Fees outside the Willamette Valley) |
| Statutory Authority or other Legal Authority | ORS 468.020 ORS 468A.025 |
| Statutes Implemented | Enrolled Senate Bill 528 (SB528-B), 75 th Oregon Legislative Assembly, 2009 Regular Session. ORS: 468A.560, 468A.575, 468A.580, 468A.585, 468A.595, 468A.610, 468A.615, 468A.620 |
| Need for the Rule(s) | This rulemaking is needed to revise DEQ field burning rules to reflect changes to state law, due to the adoption of Senate Bill 528 by the Oregon Legislature in June 2009. This rulemaking is also needed to make various changes to better align DEQ and Oregon Department of Agriculture (ODA) field burning rules. These rule revisions, if adopted, will be submitted to the U.S. Environmental Protection Agency as a revision to the State of Oregon Clean Air Act Implementation Plan, which is a requirement of the Clean Air Act. This rulemaking is being proposed jointly with ODA rulemaking, which can be found at www.oregon.gov/ODA/NRD/smokefrontpage.shtml . |
| Documents Relied Upon for Rulemaking | DEQ relied upon the following documents for this rulemaking: <ul style="list-style-type: none"> • Enrolled Senate Bill 528 (SB 528-B), 75th Oregon Legislative Assembly, 2009 Regular Session. • Oregon Field Burning Statutes: ORS 468A.550 through 468A.620, 468A.990 and 468A.992. • Oregon Department of Agriculture, Field Burning Rules, Division 77. • State Fire Marshal Field Burning Rules OAR 837-110-0005 to 837-110-0155. • DEQ Field Burning Rules, Division 266 |
| Requests for Other Options | Pursuant to ORS 183.335(2)(b)(G), DEQ requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business. |
| Fiscal and Economic Impact, Statement of Cost Compliance | The purpose of this Fiscal and Economic Impact Statement is to describe the impact of DEQ's proposed rulemaking, but not the impacts of an existing state law. As noted below, Senate Bill 528 made a number of changes to the field burning laws, such as eliminating most field burning in the Willamette Valley, with certain exceptions, and increased fees for the remaining burning. DEQ must amend its rules to reflect these nondiscretionary changes. While DEQ expects this legislation will have a negative economic impact on grass seed and cereal grain growers in the Willamette Valley, the 2009 Oregon Legislature has already considered the economic impact on growers, as well as other fiscal issues, and therefore DEQ does not address these factors in this Fiscal and Economic Impact Statement. In addition, SB 528 authorized the Environmental Quality Commission (EQC) to adopt some discretionary rules concerning field burning, which this Fiscal and Economic Impact Statement must address. |
| Overview | DEQ is proposing this rulemaking to implement changes to the Oregon field burning state statutes as a result of the adoption of Senate Bill 528 by the 2009 Oregon Legislature. This legislation contained the following provisions: <ul style="list-style-type: none"> • Prohibits Willamette Valley field burning in 2010, except for "emergency burning" and "identified species/steep terrain burning," described below. • Authorizes the EQC to approve "emergency burning" of up to 2,000 acres per year to address disease outbreaks and insect infestations, where the need for burning outweighs the danger to public health. Also allows the EQC to assess fees for this burning. • Reduces the limit on the burning of certain fire-dependent "identified species" and grass fields |

located on "steep terrain" from 25,000 acres to 15,000 acres per year.

- Reduces the limit on propane flaming to 500 acres per year until 2013, and then none thereafter.
- Reduces the limit on stack burning to 1,000 acres per year until 2013, and then none thereafter.
- Doubles the registration and burn fees for the remaining field burning and other types of burning.
- Authorizes the EQC to prohibit field burning in "critical non-burn areas", such as fields where power transmission lines are present.

DEQ's proposed rulemaking consists of the following:

1. Incorporates into rule the acreage limitations and fee increases in Senate Bill 528 described above.
2. Based on Senate Bill 528, establishes a new rule for "emergency burning" and the criteria and procedures for approval. Delegation of authority to DEQ's Director by the EQC is being proposed for this rule, based on ORS 468A.610 (11)(a). This rule also would require fees for this burning, to cover administrative and smoke management related costs.
3. Based on Senate Bill 528, establishes a new rule for "critical non-burn areas" in the Willamette Valley and proposes to define these areas as grass seed or cereal grain fields with 230kV or greater power transmission lines present, and fields within 500 feet of any school, airport, or hospital. Prohibits burning on the acreage in these non-burn areas.
4. Clarifies other requirements that restrict or prohibit field burning in certain areas of the Willamette Valley, such as near cities, highways, and airports.
5. Includes a new rule that requires a burn fee for any field burning conducted outside the Willamette Valley. This fee is currently required under statute (ORS 468A.615). This rulemaking adds this fee to DEQ rules to align with ODA rules. Limited amounts of field burning currently take place in Jefferson, Union, and Umatilla counties.
6. Proposes miscellaneous changes to better align DEQ and ODA field burning rules.

More information on DEQ's proposed rulemaking can be found on DEQ's website at www.deq.state.or.us/aq/burning/willamette.htm.

Impacts on the General Public

It should be noted that Senate Bill 528 eliminates most field burning in the Willamette Valley by 2010, and similarly stack burning and propane flaming by 2013. This will benefit the general public and residents of the Willamette Valley by reducing the frequency of exposure to smoke during the summer months. While the economic value of this public health benefit cannot be accurately quantified, due to the lack of necessary information, it should still be recognized. In addition, the general public may be impacted indirectly by this proposed rulemaking if costs of compliance are passed along by grass seed and cereal grain growers to the general public in the form of increased grass seed and cereal grain prices. However, DEQ does not have adequate information to accurately estimate this potential impact.

Impacts to Small Business (50 or fewer employees – ORS183.310(10))

Grass seed and cereal grain growers, who typically have 50 or fewer employees, represent the small business affected by this proposed rulemaking. The following proposed rule provisions have an impact on grass and cereal grain growers.

1. Fees required for emergency burning. For emergency burning Senate Bill 528 states that the EQC "may assess fees for the acreage burned." Therefore, DEQ is proposing to require the same registration and burn fees currently required for general field burning under state law. Field registration is \$4 per acre for open burning, and \$2 per acre for propane flaming. Burn fees are \$16 per acre for open burning, \$10 per acre for stack burning, and \$4 per acre for propane flaming. For example, under the proposed rule, the total cost for emergency burning of a 50 acre field would be \$1,000. Requiring these fees is necessary to cover administrative costs associated with processing registration forms, reviewing emergency burning requests, and weather forecasting and smoke management related work.

2. Cost for documentation of disease outbreak or insect infestation for emergency burning. Under the proposed rules, growers seeking approval of emergency burning will need to submit a petition to DEQ which documents the extent and severity of the disease outbreak or insect infestation, risk to adjacent fields, amount of burning needed to address the problem, and an estimate of the financial impact from the disease or insect problem. Growers are encouraged to obtain documentation on the severity of the disease or insect problem from an extension agent, agronomist, or other crop expert. Providing documentation is expected to have costs associated with it, but will be case specific and cannot be accurately quantified by DEQ at this time. However, since the proposed rule is based on citing results from seed testing, which growers routinely conduct after harvesting, providing this documentation may not involve any significant additional cost.

3. Cost related to emergency burning requests being denied, or reaching the 2,000 acre limit. Although it is unknown how many emergency burning requests will be submitted each year, it is possible some will be denied, based on the criteria for approval in the proposed rules. In addition, there may be cases where not all requests for emergency burning can be granted, due to the 2,000 acre limit under state law. The denial of requests or reaching the acreage limit will result in some growers having to rely on more costly non-burning treatments to address the problem, and which may not be as effective as burning. These costs are case specific and cannot be accurately quantified by DEQ at this time.

4. Costs associated with “critical non-burn areas.” Under Senate Bill 528, critical non-burn areas “may include, but are not limited to, areas under power transmission lines.” Based on input from DEQ’s field burning rule advisory committee, DEQ is proposing to define these areas as fields with 230kV or greater power lines, and fields that are close to schools, airports, and hospitals. An initial estimate of the number of grass seed fields in the Willamette Valley close to schools where field burning is routinely conducted is approximately 10 to 30 fields. The size of the critical non-burn area for power transmission lines is being proposed as 150 feet, or 75 feet on either side of the center of the power transmission line. For critical non-burn areas next to schools, airports, and hospitals, the proposed size is 500 feet. This larger area is needed to provide greater protection for these areas.

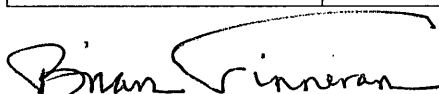
The requirement for no burning in a critical non-burn area may result in some yield loss due to the lack of burning in this part of the field. Assuming the remaining portion of the field is burned, and depending on the size of the field, the overall impact from the reduced yield may not be significant. Estimating the economic impact would be case-specific to each field and grower’s circumstances, and cannot be accurately calculated by DEQ for each critical non-burn area. However, as an example, using 2008-09 market prices for fine fescue grass seed and assuming a worst case reduction of 20-30 percent in seed yield from not burning within a critical non-burn area for three successive years, the economic impact on a grower could be in the range of \$200 to \$300 per acre per year.

Critical non-burn areas will only affect fields in the northeastern part of the Willamette Valley where 15,000 acres of “identified species” and steep terrain burning is allowed per year in 2010 and beyond, and in other areas of the Valley where 2,000 acres of emergency burning may be approved each year.

Non-grass seed and cereal grain grower small businesses may be impacted indirectly by this proposed rulemaking if costs of compliance are passed along by grass seed and cereal grain growers to small businesses in the form of increased grass seed and cereal grain prices. However, DEQ does not have adequate information to accurately estimate this potential impact.


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| Cost of Compliance on Small Business (50 or fewer employees – ORS183.310(10)) | a) Estimated number of small businesses subject to the proposed rule | There are 100-200 growers in the Willamette Valley. |
| | b) Types of businesses and industries with small businesses subject to the proposed rule | Grass seed and cereal grain growers. |
| | c) Projected reporting, recordkeeping and other administrative activities required by small businesses for compliance with the proposed rule, including costs of professional services | Growers seeking emergency burning, as described above, will have administrative procedures to address related to submitting requests, field registration, documenting the severity of the disease and insect outbreaks, obtaining burning approval, waiting for burn day authorization, and paying fees. Growers with critical non-burn areas will have to register their fields and identify these areas. |
| | d) The equipment, supplies, labor, and increased administration required by small businesses for compliance with the proposed rule | No additional equipment or supplies are expected under these proposed rules. There will be increased labor and administration related to emergency burning and critical non-burn areas, as described above. |
| | e) A description of the manner in which DEQ involved small businesses in | DEQ worked with ODA and an advisory committee to develop this proposed rulemaking. This committee included two grass seed growers, a representative of the Oregon Seed Council, and an OSU agronomist |

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| | the development of this rulemaking | with expertise in the area of disease and insect problems affecting grass seed fields. DEQ also consulted with other OSU crop science agronomists to discuss the costs associated with critical non-burn areas, and the extent of documentation that would be needed for emergency burning requests under this proposed rulemaking. |
| Impacts on Large Business (all businesses that are not "small businesses" under ORS183.310(10)) | As noted above, most grass seed and cereal grain growers meet the definition of a "small" business. It is unknown how many of these growers would be considered large businesses. DEQ anticipates that the impacts described above for small businesses would be similar for impacts to grass seed and cereal grain growers that are large businesses. | Additionally, non-grass seed and cereal grain grower large businesses may be impacted indirectly by this proposed rulemaking if costs of compliance are passed along by grass seed and cereal grain growers to the large businesses in the form of increased grass seed and cereal grain prices. However, DEQ does not have adequate information to accurately estimate this potential impact. |
| Impacts on Local Government | None. | |
| Impacts on State Agencies other than DEQ | The reduction in acres that can be burned under Senate Bill 528 will likely decrease the revenue available to ODA to fund the Willamette Valley Smoke Management Program for field burning. This loss of revenue may be offset somewhat by the doubling of fees under this bill, and another provision that allows ODA to increase the fees to cover the costs of operating the program. There will be impacts on ODA from new rules for emergency burning and critical non-burn areas, in terms of the administrative duties associated with these new requirements. Additional information on the impact to ODA can be found in their Statement of Need and Fiscal Impact Statement associated with their proposed rulemaking, concurrent with DEQ's rulemaking effort, and can be found at ODA's website at http://www.oregon.gov/ODA/NRD/smokefrontpage.shtml . | |
| Impacts on DEQ | The primary effect on DEQ will be new work associated with reviewing requests for emergency burning. It is unknown at this time how many requests will occur each year. If these requests occur, DEQ staff will review them with help from ODA staff. DEQ could approve all, some, or none of the requests. If the number of requests is relatively few, DEQ expects the impact of this workload can be handled by existing staff. Other work associated with DEQ oversight of ODA's field burning program remains mostly unchanged, and is minimal. | |
| Assumptions | The assumptions used for identifying the impacts described above were based on distinguishing between impacts of nondiscretionary portions of the statutory amendments made by Senate Bill 528 and the discretionary actions authorized by Senate Bill 528 that have been proposed by DEQ in this rulemaking. The economic impact of nondiscretionary portions of the statutory amendments made by Senate Bill 528 was already considered as part of this legislation, is not revisited here by DEQ. Only the economic impact from discretionary actions authorized by Senate Bill 528 associated with this rulemaking are considered in this Fiscal and Economic Impact Statement. | |
| Housing Costs | DEQ has determined that this proposed rulemaking will have no effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel. | |
| Administrative Rule Advisory Committee | DEQ developed these rule revisions with the assistance of a field burning advisory committee, which included grass seed growers, environmental groups, and representatives from the Oregon Seed Council, OSU Crop Science, the State Fire Marshal, Lane Regional Air Pollution Authority, and the Environmental Justice Task Force. | |


 Prepared by

Brian Finneran
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3/11/10
 Date


 Approved by DEQ Budget Office

JAMES ROYS
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3/11/10
 Date

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Land Use Evaluation Statement

Rulemaking Proposal
for
Field Burning Rule Revisions

RULE CAPTION

This rulemaking revises DEQ field burning rules to incorporate recent changes to the field burning statutes.

1. Explain the purpose of the proposed rules.

DEQ is proposing this rulemaking to implement changes to the Oregon field burning state statutes (ORS 468A.550 through 468A.620) as a result of the adoption of Senate Bill 528 by the 2009 Oregon Legislature. This legislation contained the following provisions, among others:

- Prohibits Willamette Valley field burning in 2010, except for “emergency burning” and “identified species/steep terrain burning” described below.
- Authorizes the Environmental Quality Commission to approve “emergency burning” of up to 2,000 acres per year to address disease outbreaks and insect infestations, where the need for burning outweighs the danger to public health. Also allows the commission to assess fees for this burning.
- Reduces the limit on the burning of certain fire-dependent “identified species” and grass fields located on “steep terrain” from 25,000 acres to 15,000 acres per year.
- Reduces the limit on propane flaming to 500 acres per year until 2013, and then none thereafter.
- Reduces the limit on stack burning to 1,000 acres per year until 2013, and then none thereafter.
- Doubles the registration and burn fees for field burning and other types of burning.
- Authorizes the EQC to prohibit field burning in “critical non-burn areas”, such as fields where power transmission lines are present.

DEQ’s proposed rulemaking principally consists of the following:

1. Incorporates into rule the acreage limitations and fee increases in Senate Bill 528 described above.
2. Based on Senate Bill 528, establishes a new rule for “emergency burning” and the criteria and procedures for EQC approval. Delegation of authority to DEQ’s director by the EQC is being

proposed for this rule, based on ORS 468A.610(11)(a). This rule also would require fees for this burning, to cover administrative and smoke management related costs.

3. Based on Senate Bill 528, establishes a new rule for “critical non-burn areas” in the Willamette Valley and proposes to define these areas as grass seed or cereal grain fields with 230kV or greater power transmission lines present, and fields within 500 feet of any school, airport, or hospital. Prohibits burning on the acreage in these non-burn areas.
4. Clarifies other requirements that restrict or prohibit field burning in certain areas of the Willamette Valley, such as near cities, highways, and airports.
5. Includes a new rule that requires a burn fee for any field burning conducted outside the Willamette Valley. This fee is currently required under statute (ORS 468A.615). This rulemaking adds this fee to DEQ rules to align with Oregon Department of Agriculture (ODA) rules. Limited amounts of field burning currently take place in Jefferson, Union, and Umatilla counties.
6. Proposes miscellaneous changes to better align DEQ and ODA field burning rules.

If adopted, DEQ will submit these rule revisions to the U.S. Environmental Protection Agency as a revision to the State of Oregon Clean Air Act Implementation Plan, which is a requirement of the Clean Air Act.

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?

Yes ___ No X

a. If yes, identify existing program/rule/activity:

Not applicable

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes ___ No (if no, explain):

Not applicable

c. If no, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

This proposed rulemaking implements changes in state law that will significantly reduce field burning in some parts of the Valley, and eliminate it in others. Since the purpose of the Land Use Evaluation Statement is to evaluate the affects of DEQ’s proposed rulemaking, the effects of the changes to state law will not be addressed here. This proposed rulemaking applies to Willamette Valley agricultural lands that are in grass seed or cereal grain production, and thus is

associated with Oregon's Statewide Planning Goal 3 - preserving and maintaining agricultural lands, and also Goal 6 - to maintain and protect air quality. However, this proposed rulemaking is not considered to affect land use.

These proposed rules include new provisions for granting up to 2,000 acres of emergency burning each year, to address disease outbreaks or insect infestations that pose an economic hardship to grass seed and cereal grain growers in the Valley. If approved by DEQ, emergency burning will be conducted under a smoke management program that minimizes any smoke impact on the public, and therefore is consistent with Goal 6. Permitting emergency burning is also consistent with the Goal 3, by applying fire to fields that might be overrun by disease and insect problems, and no longer agriculturally productive. The proposed rules also contain new provisions that establish critical non-burn areas in the Willamette Valley, to protect 230kV or greater power transmission lines when conducting field burning, and to protect schools, airports, and hospitals. These non-burn areas further the objectives of Goal 6 to maintain and improve air quality. Establishing these non-burn areas should have a very minor effect on the existing agricultural land use, as there would be a relatively small portion of the field where no burning is allowed. This should not interfere with the raising of grass seed or cereal grain crops, and as such have no appreciable negative effect on Goal 3. The other proposed rule changes associated with this rulemaking are considered minor, with no appreciable effect on land use.

- 3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.**

Not applicable.