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Secretary of State

438-015-0052
Attorney Fees in Connection with Claim Disposition Agreements

(1) When a claim disposition agreement is approved under the provisions of ORS 656.236 and OAR 438-009-0020, an attorney fee may be approved by the Board in an amount up to 25 percent of the first $50,000 of the agreement proceeds plus ten percent of any amount of the proceeds in excess of $50,000. Under extraordinary circumstances, a fee may be authorized in excess of this calculation.

(2) When the agreement proceeds are to be paid in more than one payment payable within a period of more than one year from the date of approval, for purposes of approving an attorney fee under section (1) of this rule, agreement proceeds shall be calculated based on the "present value" of the total proceeds. "Present value" may be represented by the actual present value of the total agreement proceeds or the purchase price of any annuity designed to fund payment of the total agreement proceeds. The parties shall provide the Board with a written statement of the "present value" of the total agreement proceeds.

Stat. Auth.: ORS 656.388(4), 656.726(5)
Stats. Implemented: ORS 656.236(4), 656.388
Hist.: WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 6-1991(Temp), f. 8-29-91, cert. ef. 9-2-91; WCB 8-1991, f. 11-6-91, cert. ef. 11-7-91; WCB 1-1998, f. 11-20-98, cert. ef. 2-1-99; WCB 2-2016, f. 10-13-16, cert. ef. 11-1-16

438-015-0055
Attorney Fees When a Claimant Requests Review by the Board

(1) If a claimant requests review of an Administrative Law Judge's order on the issue of compensation for temporary disability and the Board awards additional compensation, the Board shall award a reasonable assessed attorney fee.

(2) If a claimant requests review of an Administrative Law Judge's order on the issue of compensation for permanent disability and the Board awards additional compensation, the Board shall approve a fee of 25 percent of the increased compensation.

(3) If a claimant requests review of an Administrative Law Judge's order on the issue of compensation for permanent total disability and the Board awards additional compensation, the Board shall approve a fee of 25 percent of the increased compensation, provided that the total of fees approved by the Administrative Law Judge and the Board shall not exceed $30,000.

(4) If a claimant requests review of an Administrative Law Judge's order that upheld a denial of compensability for a claim and the Board orders the claim accepted, the Board shall assess a reasonable attorney fee to be paid by the insurer or self-insured employer to the claimant's attorney.

(5) If a claimant requests review of an Administrative Law Judge's order that upheld a responsibility denial issued under ORS 656.308(2) and the claimant's attorney actively and meaningfully participates in finally prevailing against the responsibility denial, the Board shall award a reasonable assessed fee to be paid by the insurer or self-insured employer who issued the responsibility denial. Absent a showing of extraordinary circumstances, the assessed attorney fee for prevailing over the responsibility denial shall not exceed $2,500. The maximum attorney fee awarded under this section is subject to an annual adjustment on July 1 as calculated by the Workers' Compensation Division (on behalf of the Director) by the same percentage increase as made to the average weekly wage defined in ORS 656.211, if any. Before July 1 of each year, the Board, by bulletin, will publish the maximum fee, after adjusting the fee by the same percentage increase, if any, to the average weekly wage. Dollar amounts will be rounded to the nearest whole number.

(6) If a claimant requests review of an Administrative Law Judge's order regarding a claim reclassification order from the Workers' Compensation Division, and the Board finally determines that the claim should be classified as disabling, the Board may award a reasonable assessed fee.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.308(2), 656.382, 656.383, 656.386, 656.388
Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-1998, f. 11-20-98, cert. ef. 2-1-99; WCB 1-2009, f. 10-7-09, cert. ef. 1-1-10; WCB 2-2012, f. 11-13-12, cert. ef. 1-1-13; WCB 1-2015, f. 12-16-15, cert. ef. 1-1-16; WCB 2-2016, f. 10-13-16, cert. ef. 11-1-16

438-015-0080
Attorney Fees in Own Motion Cases

(1) If an attorney is instrumental in obtaining increased temporary disability compensation, the Board shall approve a fee of 25 percent of the increased compensation, to be paid out of the increased compensation.

(2) If an attorney is instrumental in obtaining a voluntary reopening of an Own Motion claim that results in increased temporary disability compensation, the Board shall approve a fee of 25 percent of the increased compensation, to be paid out of the increased temporary disability compensation resulting from the voluntary reopening.

(3) If the Board awards additional compensation for permanent disability, the Board shall approve a reasonable attorney fee in the amounts prescribed in OAR 438-015-0040, payable out of the increased compensation.

(4) The Board may allow a fee in excess of the amounts prescribed in sections (1) through (3) of this rule upon a finding that extraordinary services have been rendered.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.267(3), 656.278(1), 656.386(1)(2), 656.388
Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 2-1990, f. 1-24-90, cert. ef. 2-28-90; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1998, f. 11-20-98, cert. ef. 2-1-99; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08; WCB 2-2016, f. 10-13-16, cert. ef. 11-1-16

438-015-0082
Timely Payment of Attorney Fees

(1) An approved attorney fee shall be paid within the time required for payment of the compensation out of which the approved fee is to be paid.

(2) An assessed attorney fee shall be paid within 14 days of the date the order authorizing the fee becomes final.

Stat. Auth.: ORS 656.307, 656.388, 656.593, ORS 656.726(5)
Stats. Implemented: ORS 656.382(1), 656.386(1)(2), 656.388
Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 2-2016, f. 10-13-16, cert. ef. 11-1-16

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Department of Environmental Quality
Chapter 340

Rule Caption: Art Glass Permanent Rulemaking
Adm. Order No.: DEQ 10-2016
Filed with Sec. of State: 10-3-2016
Certified to be Effective: 10-3-16
Notice Publication Date: 7-1-2016
Rules Adopted: 340-244-9000, 340-244-9010, 340-244-9015, 340-244-9020, 340-244-9030, 340-244-9040, 340-244-9050, 340-244-9060, 340-244-9070, 340-244-9080, 340-244-9090
Rules Amended: 340-244-0010
Rules Repealed: 340-244-0010(T), 340-244-9000(T), 340-244-9010(T), 340-244-9020(T), 340-244-9030(T), 340-244-9040(T), 340-244-9050(T), 340-244-9060(T), 340-244-9070(T), 340-244-9080(T), 340-244-9090(T)
Subject: The Oregon Environmental Quality Commission adopted permanent rules for colored art glass manufacturers. These rules were based on the temporary rules adopted by EQC in April 2016, with corrections in May 2016, with modifications based on new information and public comment.

Brief history

Elevated levels of hazardous air pollutants were found in the air around two glass manufacturing facilities in Portland. In May 2015, DEQ received the initial results of a study the U.S. Forest Service conducted looking at moss samples as an indicator or screening tool for contaminants in the air. The study's results showed that moss samples in the areas near two CAGMs contained high levels of cadmium and arsenic in Southeast Portland and cadmium in North Portland.

This pilot study prompted DEQ to set up air monitoring systems near the glass company in Southeast Portland. The results of DEQ air monitoring in October 2015 confirmed that the glass company was the likely source. DEQ completed its quality assurance and quality control review of those samples in late January 2016 and then shared its analysis of the findings with the Oregon Health Authority and the Multnomah County Health Department. DEQ also identified a second area of concern near the glass company in North Portland.

The glass companies were operating in compliance with the current law. One company was operating within its permit and the other company was not required to have a permit.

Based on sampling results DEQ concluded that uncontrolled furnaces used at the two facilities were more likely than not to emit potentially unsafe levels of hazardous air pollutants, and that current

federal regulations for this source category were not sufficient to protect public health and the environment. The permanent rules that EQC adoption are intended to ensure that air emissions from colored art glass manufacturers do not cause unsafe levels of glassmaking hazardous air pollutants (arsenic, cadmium, chromium, lead, manganese, nickel and selenium) in the air nearby.

EQC adopted temporary rules April 21, 2016. The adopted permanent rules replace the temporary rules and make the requirements permanent, with modifications further described below.

Regulated parties

The adopted rules apply to colored art glass manufacturers anywhere in Oregon that make more than five tons per year of glass containing certain hazardous air pollutants.

The manufacturers will incur expenses to obtain air permits; submit reports to DEQ; and depending on the compliance path chosen, to install, operate and maintain emission control devices, and/or perform stack testing and dispersion modeling.

Outreach efforts

To collect information to improve the rule and give the public and affected parties an opportunity to comment, DEQ made the following outreach efforts:

- Convened a fiscal advisory committee to review DEQ's estimate of the fiscal impact of the proposed rules. Representatives from all known companies that would be subject to the rules, as well as multiple environmental and neighborhood groups were invited to participate. The committee met May 27, 2016 and June 10, 2016. These meetings were open for the public to attend or to listen to by phone.

- Sent updates about the rulemaking process through a GovDelivery email list.

- Published a public notice requesting comment on the rule. The public notice included draft rule language and invited comment on any part of the rule. It also specifically invited comment on three specific questions about rule applicability and control device source testing.

- Accepted public comment through the DEQ website and other formats from June 15, 2016, through July 29, 2016.

- Held a public hearing July 19, 2016. The public hearing was held in Portland, and a video and audio feed was available for those who wanted to attend remotely.

Hearing testimony and public comments

DEQ received 151 unique comments from 136 commenters. That includes comments made in person during the public hearing, as well as comments submitted through the online comment tool on DEQ's website, through email or in hard copy. DEQ read and considered all comments.

DEQ identified 60 different points that were made by one or more commenters.

Changes from the temporary rules

DEQ's public notice for this rulemaking included proposed rule language that was unchanged from the temporary rule, with a note that DEQ was requesting comment on several possible changes:

- Should the rule be modified to apply to sources that make less than 10 tons per year of colored art glass?

- Should the rule be modified to apply statewide, rather than only in the Portland Air Quality Maintenance Area?

- The temporary rule requires control devices be shown to capture at least 99.0 percent of incoming particulate matter. Should that standard be replaced with one based on the particulate matter at the outlet of the control device?

After reviewing public comments on these three issues, DEQ made the following changes:

1. Reducing the applicability threshold for the rule from 10 tons per year of hazardous air pollutant-containing glass to five tons per year.

2. Making the rule apply statewide rather than only in the Portland area

3. Changing the standard that confirms a control device is working from the 99.0% capture efficiency standard to a 'grain loading' particulate matter standard at the control device outlet of 0.005 gr/dscf (grains of particulate per dry standard cubic foot of air.)

DEQ also received comments on many other topics. In response to these comments, the permanent rules include these elements that are different from the temporary rules:

4. Adding selenium to the list of glassmaking hazardous air pollutants that are regulated in the rule, based on monitored levels of selenium that were at or exceeding the daily maximum acceptable concentration.

5. Revising the requirements for control devices and providing compliance options. Tier 2 facilities must perform a 'grain loading' source test and install either a baghouse leak detection system (BLDS) or a high efficiency particulate arrestance (HEPA) afterfilter on each control device. Tier 1 facilities may choose to perform a 'grain loading' source test or install a BLDS or a HEPA afterfilter on each control device.

6. Changing the rule's 24-hour health benchmark for hexavalent chromium from 36 ng/m3 (nanograms per cubic meter of air) to five ng/m3, based on a re-evaluation of the exposure levels that could pose an unacceptable risk to human health. An Oregon Health Authority review of health benchmarks is ongoing and may result in a change in the benchmarks through future rulemakings.

7. Changing the way that Tier 2 facilities set maximum usage limits for trivalent and hexavalent chromium. The new method of testing chromium emissions no longer assumes that the control device capture efficiency for particulate matter is the same as that for chromium. Facilities must test for chromium at the outlet of the control device rather than the inlet, and may choose to test for hexavalent chromium emissions or to test for total chromium emissions and assume all of it is hexavalent chromium.

8. Adding a provision for compliance extensions for Tier 1 colored art glass manufacturers if control device installation is delayed for reasons beyond their reasonable control. This has been added based on reports that some affected facilities are experiencing lengthy delays in receiving necessary building permits.

Making the rule apply statewide and adding selenium to the list of regulated hazardous air pollutants means that affected facilities will need additional time to comply with the rules. The rules include delayed compliance dates for many of the new requirements to give companies time to make necessary changes.

Rules Coordinator: Meyer Goldstein—(503) 229-6478

340-244-0010

Policy and Purpose

The Environmental Quality Commission finds that certain air contaminants for which there are no ambient air quality standards may cause or contribute to an identifiable and significant increase in mortality or to an increase in serious irreversible or incapacitating reversible illness or to irreversible ecological damage, and are therefore considered to be hazardous air pollutants. It is the policy of the Commission that no person may cause, allow, or permit emissions into the ambient air of any hazardous substance in such quantity, concentration, or duration determined by the Commission to be injurious to public health or the environment. The purpose of this Division is to establish emissions limitations on sources of these air contaminants. In order to reduce the release of these hazardous air pollutants and protect public health and the environment, it is the intent of the Commission to adopt by rule within this Division the source category specific requirements that are promulgated by the EPA, and state standards to reduce the release of these hazardous air pollutants. Furthermore, it is hereby declared the policy of the Commission that the standards contained in this Division are considered minimum standards, and as technology advances, protection of public health and the environment warrants, more stringent standards may be adopted and applied.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0100; DEQ 4-2016(Temp), f. & cert. ef. 4-21-16 thru 10-17-16; DEQ 10-2016, f. & cert. ef. 10-3-16

340-244-9000
Colored Art Glass Manufacturing Facility Rules; Applicability and Jurisdiction

Notwithstanding OAR 340 Division 246, OAR 340-244-9000 through 9090 apply to facilities located within the Portland Air Quality Maintenance Area that:

(1)(a) Manufacture colored glass from raw materials, or a combination of raw materials and cullet, for use in art, architecture, interior design and other similar decorative applications, or

(b) Manufacture colored glass products from raw materials, or a combination of raw materials and cullet, for use by colored glass manufacturers for use in art, architecture, interior design and other similar decorative applications; and

(2) Manufacture 10 tons per year or more of colored glass using raw materials that contain any of the following metal HAPs: arsenic, cadmium, chromium, lead, manganese and nickel.

Stat. Auth.: ORS 468.020, 468A.025, & 468A.040
Stats. Implemented: ORS 468A.025, & 468A.040
Hist.: DEQ 4-2016(Temp), f. & cert. ef. 4-21-16 thru 10-17-16; DEQ 10-2016, f. & cert. ef. 10-3-16

340-244-9010
Colored Art Glass Manufacturing Facility Rules; Definitions

The definitions in OAR 340-200-0020 and this rule apply to OAR 340-244-9000 through 9090. If the same term is defined in this rule and 340-200-0020, the definition in this rule applies to this division.

(1) "Colored Art Glass Manufacturer" or "CAGM" means a facility that meets the applicability requirements in OAR 340-244-9000 and refers to the owner or operator of such a facility when the context requires.

(2) "Chromium III" means chromium in the +3 oxidation state, also known as trivalent chromium.

(3) "Chromium VI" means chromium in the +6 oxidation state, also known as hexavalent chromium.

(4) "Chromium", without a following roman numeral, means total chromium.

(5) "Controlled" means the glassmaking furnace emissions are treated by an emission control device approved by DEQ.

(6) "Cullet" means pieces of finished glass that, when mixed with raw materials and charged to a glassmaking furnace, is used to produce new glass. Cullet does not include frit as defined in subsection (9)(a). Cullet is not considered to be a raw material.

(7) "Emission control device" means control device as defined in OAR 340 Division 200.

(8) "Finished glass" means the final glass product that results from melting and refining materials in a glassmaking furnace. Finished glass that has been remelted without the addition of raw materials is still finished glass.

(9) "Frit" means both of the following:

(a) Granules of glassified or vitrified material that is not made from finished glass, and which contains a higher proportion of glassmaking HAP than would be found in a finished glass. The purpose of such material includes, but is not limited to, making powdered glassmaking HAPs safer to handle by combining them with silica or other oxides.

(b) Granules of crushed finished glass.

(10) "Glassmaking furnace" means a refractory-lined vessel in which raw materials are charged and melted at high temperature to produce molten glass.

(11) "Glassmaking HAP" means arsenic, cadmium, chromium, lead, manganese, nickel or selenium in any form, such as the pure chemical element, in compounds or mixed with other materials.

(12) "Raw material" means:

(a) Substances that are intentionally added to a glass manufacturing batch and melted in a glassmaking furnace to produce glass, including but not limited to:

(A) Minerals, such as silica sand, limestone, and dolomite;

(B) Inorganic chemical compounds, such as soda ash (sodium carbonate), salt cake (sodium sulfate), and potash (potassium carbonate);

(C) Oxides and other compounds of chemical elements, such as lead oxide, chromium oxide, and sodium antimonate; and

(D) Ores of chemical elements, such as chromite and pyrolusite.

(b) Glassmaking HAPs that are naturally-occurring trace constituents or contaminants of other substances are not considered to be raw materials.

(c) Raw material includes materials that contain glassmaking HAPs in amounts that materially affect the properties of the finished product, such as its color, texture or bubble content. Such materials may be powdered, frit, or in some other form. For the purpose of this definition, frit as described in subsection (9)(a) is a raw material, but frit as described in subsection (9)(b) is not a raw material.

(d) Cullet and material that is recovered from a glassmaking furnace control device for recycling into the glass formulation are not considered to be raw materials.

(13) "Tier 1 CAGM" means a CAGM that produces at least 5 tons per year, but less than 100 tons per year, of glass using raw materials that contain glassmaking HAPs in glassmaking furnaces that are only electrically heated.

(14) "Tier 2 CAGM" means:

(a) A CAGM that produces 5 tons per year or more of glass using raw materials that contain glassmaking HAPs in glassmaking furnaces, at least one of which is fuel-heated or combination fuel- and electrically-heated; or

(b) Produces 100 tons per year or more of glass using raw materials that contain glassmaking HAPs in any type of glassmaking furnace.

(15) "Uncontrolled" means the glassmaking furnace emissions are not treated by an emission control device approved by DEQ.

(16) "Week" means Sunday through Saturday.

Stat. Auth.: ORS 468.020, 468A.025, & 468A.040
Stats. Implemented: ORS 468A.025, & 468A.040
Hist.: DEQ 4-2016(Temp), f. & cert. ef. 4-21-16 thru 10-17-16; DEQ 10-2016, f. & cert. ef. 10-3-16

340-244-9015
Colored Art Glass Manufacturing Facility Rules; Compliance Extensions

A Tier 1 CAGM may request, and DEQ may grant, one or more extensions, not to exceed a total of 12 months, to the compliance date for installation of emission control systems if the CAGM cannot meet the compliance date for reasons beyond its reasonable control. A Tier 1 CAGM that has been granted an extension:

(1) Is allowed to operate without the emission control device required by OAR 340-224-9050 until the required emission control device is installed and operational, or the extension expires, whichever is earlier; and

(2) Must comply with OAR 340-244-9020 and 9060(1) as applicable.

Stat. Auth.: ORS 468.020, 468A.025, & 468A.040
Stats. Implemented: ORS 468A.025, & 468A.040
Hist.: DEQ 10-2016, f. & cert. ef. 10-3-16

340-244-9020
Colored Art Glass Manufacturing Facility Rules; Permit Required

(1) Not later than December 1, 2016, if located within the Portland AQMA, and not later than April 1, 2017, if located outside the Portland AQMA, all CAGMs not otherwise subject to a permitting requirement must apply for a permit under OAR 340-216-8010 Table 1, Part B, category #84.

(2) A CAGM that applies for a permit on or before the required date is not in violation of OAR 340-216-0020(3).

(3) CAGMs constructed after September 1, 2016 must obtain a permit prior to construction.

Stat. Auth.: ORS 468.020, 468A.025, & 468A.040
Stats. Implemented: ORS 468A.025, & 468A.040
Hist.: DEQ 4-2016(Temp), f. & cert. ef. 4-21-16 thru 10-17-16; DEQ 10-2016, f. & cert. ef. 10-3-16

340-244-9030
Colored Art Glass Manufacturing Facility Rules; Requirements That Apply To Tier 2 CAGMs

(1) Tier 2 CAGMs located within the Portland AQMA may not use raw materials containing arsenic, cadmium, chromium, lead, manganese or nickel except in glassmaking furnaces that use an emission control device that meets the requirements of OAR 340-244-9070.

(2) Effective January 1, 2017, Tier 2 CAGMs located within the Portland AQMA may not use raw materials containing selenium except in glassmaking furnaces that use an emission control device that meets the requirements of OAR 340-244-9070.

(3) Tier 2 CAGMs located outside the Portland AQMA may not use raw materials containing arsenic, cadmium or chromium VI except in glassmaking furnaces that use an emission control device that meets the requirements of OAR 340-244-9070.

(4) Effective April 1, 2017, Tier 2 CAGMs located outside the Portland AQMA may not use raw materials containing chromium, lead, manganese, nickel or selenium except in glassmaking furnaces that use an emission control device that meets the requirements of OAR 340-244-9070.

Stat. Auth.: ORS 468.020, 468A.025, & 468A.040
Stats. Implemented: ORS 468A.025, & 468A.040
Hist.: DEQ 4-2016(Temp), f. & cert. ef. 4-21-16 thru 10-17-16; DEQ 10-2016, f. & cert. ef. 10-3-16

340-244-9040

Colored Art Glass Manufacturing Facility Rules; Operating Restrictions That Apply To Tier 2 CAGMs

(1) Subject to the limitations in OAR 340-244-9030, and except as allowed in section (2), Tier 2 CAGMs may use raw materials containing chromium in glassmaking furnaces only if DEQ has established annual and daily maximum allowable chromium usage rates that will prevent the source from exceeding the chromium VI source impact levels described in paragraph (3)(b)(C) of this rule.

(2) Notwithstanding section (1) and OAR 340-244-9030(1), (3) and (4), raw materials containing chromium may be used in glassmaking furnaces for the purpose of conducting the emissions testing under sections (3) or (4). Such use must be limited to only the amounts needed to perform the testing.

(3) After DEQ establishes any maximum allowable chromium III or chromium VI usage rate for a CAGM's glassmaking furnace or glassmaking furnaces, the CAGM must comply with the rates DEQ establishes. For the purpose of establishing any maximum allowable usage rate for chromium III or chromium VI, the following are required:

(a) A source test must be performed as specified below:

(A) Test using DEQ-approved protocols and methods for total chromium, or total chromium and chromium VI, and submit a source test plan detailing the approach to DEQ for approval;

(B) Test at the outlet of an uncontrolled glassmaking furnace, or at the outlet of the emission control device on a controlled glassmaking furnace;

(C) Test while making a glass that DEQ agrees is made under the most oxidizing combustion conditions and that contains a high percentage of the type of chromium for which a usage rate is being established, as compared to other formulas used by the CAGM;

(D) Keep records of the amount of chromium, by type, used in the formulations that are produced during the source test runs, as well as other operational parameters identified in the source test plan; and

(E) If the testing under this section is done for total chromium only, the CAGM must assume that all chromium emitted is in the form of chromium VI.

(b) The Tier 2 CAGM must perform dispersion modeling, using models and protocols approved by DEQ, to determine the annual average and daily maximum ambient concentrations that result from the Tier 2 CAGM's air emissions as follows:

(A) Submit a modeling protocol for DEQ approval;

(B) Use the maximum chromium VI emission rate;

(C) Establish a maximum chromium usage rate so that the source impact will not exceed either of the following:

(i) An annual acceptable source impact level for chromium VI concentration of 0.08 nanograms per cubic meter at the nearest sensitive receptor approved by DEQ. Sensitive receptors include, but are not limited to: residences, hospitals, schools, daycare facilities, elderly housing and convalescent facilities; and

(ii) A daily acceptable source impact level for chromium VI concentration of 5 nanograms per cubic meter at any off-site modeled receptor.

(c) Each Tier 2 CAGM must keep daily records of all glass formulations produced and, until such time as the Tier 2 CAGM has installed all emission control devices required under OAR 340-244-9030, provide to DEQ a weekly report of the daily amount of each glassmaking HAP used.

(4) Tier 2 CAGMs may apply source testing protocols equivalent to those in subsection (3)(a) to the use of chromium VI in a glassmaking furnace to establish maximum usage rates for chromium VI in controlled glassmaking furnaces that will prevent the source impact from exceeding an annual acceptable source impact level of 0.08 nanograms per cubic meter and a daily acceptable source impact level of 5 nanograms per cubic meter.

(5) Tier 2 CAGMs are not restricted on the raw materials that may be used in glassmaking furnaces that are controlled by an emission control device approved by DEQ, except that the use of raw materials containing chromium will be subject to maximum usage rates established by DEQ.

Stat. Auth.: ORS 468.020, 468A.025, & 468A.040
Stats. Implemented: ORS 468A.025, & 468A.040
Hist.: DEQ 4-2016(Temp), f. & cert. ef. 4-21-16 thru 10-17-16; DEQ 10-2016, f. & cert. ef. 10-3-16

340-244-9050

Colored Art Glass Manufacturing Facility Rules; Requirements That Apply To Tier 1 CAGMs

(1) No later than October 1, 2016, if located within the Portland AQMA, and April 1, 2017, if located outside the Portland AQMA, each Tier 1 CAGM must comply with subsection (a), (b) or (c) for each glassmaking furnace or group of glassmaking furnaces that use raw material containing arsenic, cadmium, chromium, lead, manganese or nickel:

(a) Install an emission control device that meets the emission control device requirements in OAR 340-244-9070;

(b) Demonstrate that the glassmaking furnace or group of glassmaking furnaces meets the exemption in section (3) for arsenic, cadmium, chromium, lead, manganese or nickel; or

(c) Request a permit condition that prohibits the use of arsenic, cadmium, chromium, lead, manganese or nickel in the glassmaking furnace or group of glassmaking furnaces, and comply with that condition.

(2) No later than January 1, 2017, if located within the Portland AQMA, and April 1, 2017, if located outside the Portland AQMA, each Tier 1 CAGM must comply with subsection (a), (b) or (c) for each glassmaking furnace or group of glassmaking furnaces that use raw material containing selenium:

(a) Install an emission control device that meets the emission control device requirements in OAR 340-244-9070;

(b) Demonstrate that the glassmaking furnace or group of glassmaking furnaces meets the exemption in section (3) for selenium; or

(c) Request a permit condition that prohibits the use of selenium in the glassmaking furnace or group of glassmaking furnaces, and comply with that condition.

(3) A Tier 1 CAGM is exempt from the requirement to install emission controls under subsections (1)(a) or (2)(a) on a glassmaking furnace or group of glassmaking furnaces if that CAGM meets the requirements of subsection (a) for each of the individual glassmaking HAPs listed in paragraphs (a)(A) through (a)(G) below. This exemption is not allowed for a glassmaking furnace or group of glassmaking furnaces that use raw materials containing chromium VI.

(a) The CAGM shows through source testing and dispersion modeling if necessary, following the requirements of subsections (b) and (c), that the glassmaking HAP concentrations modeled at the nearest sensitive receptor do not exceed the applicable concentration listed in paragraphs (A) through (G). For chromium VI resulting from the use of chromium III, the CAGM may source test for and model chromium VI, or may source test for and model total chromium in lieu of chromium VI, to demonstrate that the ambient concentration is below the concentration listed in paragraph (C). If the modeled total chromium ambient concentration exceeds the concentration listed in paragraph (C), then the CAGM may conduct an additional source test to measure chromium VI and model to show that the ambient concentration of chromium VI does not exceed the concentration listed in paragraph (C).

(A) Arsenic, 0.2 nanograms per cubic meter annual average;

(B) Cadmium, 0.6 nanograms per cubic meter annual average;

(C) Chromium VI, 0.08 nanograms per cubic meter annual average;

(D) Lead, 15 nanograms per cubic meter annual average;

(E) Manganese, 90 nanograms per cubic meter annual average;

(F) Nickel, 4 nanograms per cubic meter annual average;

(G) Selenium, at a concentration that the CAGM demonstrates to the satisfaction of the Director is adequate to protect members of the public from suffering adverse health effects. The Director shall consult with the Oregon Health Authority when considering whether a proposed concentration will be adequately protective.

(b) Source testing for the purpose of demonstrating the exemption in this section must be performed as follows:

(A) Test using DEQ-approved protocols and methods for each glassmaking HAP listed in paragraphs (a)(A) through (a)(G) that the Tier 1 CAGM intends to use.

(B) Test for particulate matter using DEQ Method 5 or equivalent; HAPs using EPA Method 29, CARB Method M-436 or an equivalent method approved by DEQ; and if the Tier 1 CAGM chooses, chromium VI using a method approved by DEQ.

(C) Submit a source test plan to DEQ for approval at least 30 days before the test date.

(D) For each glassmaking HAP to be tested for, test while making a glass formulation that DEQ agrees has the highest potential emissions of that glassmaking HAP. More than one source test may be required if a single glass formulation cannot meet this requirement for all glassmaking HAPs to be tested for.

(E) Keep records of the amount of each glassmaking HAP regulated under this rule used in the formulations that are produced during the source test runs, as well as other operational parameters identified in the source test plan.

(c) Dispersion modeling for the purpose of demonstrating the exemption in this section is not required for any glassmaking HAP that the source

testing under subsection (b) shows is not greater than the applicable concentration listed in paragraphs (a)(A) through (a)(G); otherwise, dispersion modeling must be performed as follows:

(A) Submit a modeling protocol for DEQ approval;

(B) Use the EPA-approved model AERSCREEN or other EPA-approved model;

(C) Use the maximum emission rate for each glassmaking HAP to be modeled as determined by the source testing required by subsection (b); and

(D) Model the ambient concentration at the nearest sensitive receptor approved by DEQ. Sensitive receptors include, but are not limited to: residences, hospitals, schools, daycare facilities, elderly housing and convalescent facilities.

Stat. Auth.: ORS 468.020, 468A.025, & 468A.040
Stats. Implemented: ORS 468A.025, & 468A.040
Hist.: DEQ 4-2016(Temp), f. & cert. ef. 4-21-16 thru 10-17-16; DEQ 10-2016, f. & cert. ef. 10-3-16

340-244-9060
Colored Art Glass Manufacturing Facility Rules; Operating Restrictions That Apply To Tier 1 CAGMs

(1) Tier 1 CAGMs may not use raw materials that contain chromium VI in any uncontrolled glassmaking furnace.

(2) Tier 1 CAGMs are not restricted on the raw materials that may be used in glassmaking furnaces that are controlled by an emission control device approved by DEQ.

Stat. Auth.: ORS 468.020, 468A.025, & 468A.040
Stats. Implemented: ORS 468A.025, & 468A.040
Hist.: DEQ 4-2016(Temp), f. & cert. ef. 4-21-16 thru 10-17-16; DEQ 10-2016, f. & cert. ef. 10-3-16

340-244-9070
Colored Art Glass Manufacturing Facility Rules; Emission Control Device Requirements

(1) CAGMs must comply with the requirements in subsection (a) or (b), as applicable, for each emission control device used to comply with this rule.

(a) Tier 1 CAGMs must comply with one of the requirements in paragraphs (A), (B) or (C):

(A) Conduct a source test as required under section (3) and demonstrate that the emission control device does not emit particulate matter in excess of 0.005 grains per dry standard cubic foot as measured by EPA Method 5 or an equivalent method approved by DEQ.

(B) If the emission control system is a fabric filter (baghouse), install a bag leak detection system that meets the requirements of section (4).

(C) If the emission control system is a fabric filter (baghouse), install an afterfilter that meets the requirements of section (5).

(b) Tier 2 CAGMs must:

(A) Conduct a source test as required under section (3) and demonstrate that the emission control device does not emit particulate matter in excess of 0.005 grains per dry standard cubic foot as measured by EPA Method 5 or an equivalent method approved by DEQ; and

(B) If a fabric filter (baghouse) is used, install either a bag leak detection system that meets the requirements of section (4) or an afterfilter that meets the requirements of section (5).

(2) Emission control device requirements:

(a) A CAGM must obtain DEQ approval of the design of all emission control devices before installation, as provided in this rule.

(b) A CAGM must submit a Notice of Intent to Construct as required by OAR 340-210-0205 through 340-210-0250 no later than 15 days before the date installation begins. If DEQ does not deny or approve the Notice of Intent to Construct within 10 days after receiving the Notice, the Notice will be deemed to be approved.

(c) Emission control devices may control emissions from more than one glassmaking furnace.

(d) Each emission control device must be equipped with the following monitoring equipment:

(A) An inlet temperature monitoring device;

(B) A differential pressure monitoring device if the emission control device is a baghouse; and

(C) Any other monitoring device or devices specified in DEQ's approval of the Notice of Intent to Construct.

(e) Each emission control device must be equipped with inlet ducting that provides the following:

(A) Sufficient cooling of exhaust gases to no more than the maximum design inlet temperature under worst-case conditions; and

(B) Provision for inlet emissions testing, including sufficient duct diameter, sample ports, undisturbed flow conditions, and access for testing.

(f) Each emission control device must be equipped with outlet ducting that provides for outlet emissions testing, including sufficient duct diameter, sample ports, undisturbed flow conditions, and access for testing.

(g) After commencing operation of any emission control device, the CAGM must monitor the emission control device as required by OAR 340-244-9080.

(3) If source testing is conducted under section (1), the CAGM must perform the following source testing on at least one emission control device. Source testing done under OAR 340-244-9040(3)(a) may be used in whole or in part to comply with this requirement.

(a) Within 60 days of commencing operation of the emission control devices, test control device outlet for particulate matter using DEQ Method 5 or equivalent method;

(b) The emission control device to be tested must be approved by DEQ;

(c) A source test plan must be submitted at least 30 days before conducting the source test; and

(d) The source test plan must be approved by DEQ before conducting the source test.

(4) If a bag leak detection system is installed under section (1), the requirements for the bag leak detection system are:

(a) The bag leak detection system must be installed and operational as soon as possible but not more than 90 days after the baghouse becomes operational or 90 days after the effective date of the rule, whichever is later.

(b) Each bag leak detection system must meet the specifications and requirements in paragraphs (A) through (H).

(A) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 1 milligram per dry standard cubic meter (0.00044 grains per actual cubic foot) or less.

(B) The bag leak detection system sensor must provide output of relative PM loadings. The owner or operator must continuously record the output from the bag leak detection system using electronic or other means (e.g., using a strip chart recorder or a data logger).

(C) The bag leak detection system must be equipped with an alarm system that will sound when the system detects an increase in relative particulate loading over the alarm set point established according to paragraph (D), and the alarm must be located such that it can be heard by the appropriate plant personnel.

(D) In the initial adjustment of the bag leak detection system, the CAGM must establish, at a minimum, the baseline output by adjusting the sensitivity (range) and the averaging period of the device, the alarm set points, and the alarm delay time.

(E) Following initial adjustment, the CAGM may not adjust the averaging period, alarm set point, or alarm delay time without approval from DEQ except as provided in paragraph (F).

(F) Once per quarter, the CAGM may adjust the sensitivity of the bag leak detection system to account for seasonal effects, including temperature and humidity, according to the procedures identified in the site-specific monitoring plan required by OAR 340-224-9080(4).

(G) The CAGM must install the bag leak detection sensor downstream of the fabric filter.

(H) Where multiple bag leak detectors are required, the system's instrumentation and alarm may be shared among detectors.

(5) If an afterfilter is installed under section (1), the requirements for the afterfilter are:

(a) The afterfilter must be installed and operational as soon as possible but not more than 120 days after the baghouse becomes operational or 120 days after the effective date of the rule, whichever is later;

(b) The afterfilter must filter the entire exhaust flow from the fabric filter (baghouse); and

(c) The afterfilter must be equipped with:

(A) HEPA filters that have a Minimum Efficiency Reporting Value of 17 (MERV 17) or higher per American National Standards Institute (ANSI) Standard 52.2; and

(B) A differential pressure monitoring device.

Stat. Auth.: ORS 468.020, 468A.025, & 468A.040
Stats. Implemented: ORS 468A.025, & 468A.040
Hist.: DEQ 4-2016(Temp), f. & cert. ef. 4-21-16 thru 10-17-16; DEQ 6-2016(Temp), f. & cert. ef. 5-6-16 thru 10-17-16; DEQ 10-2016, f. & cert. ef. 10-3-16

340-244-9080
Colored Art Glass Manufacturing Facility Rules; Emission Control Device Monitoring

(1) Each Tier 1 CAGM must perform the following monitoring on each emission control device it uses to comply with this rule:

(a) At least once each week, observe and record the inlet temperature and the fabric filter (baghouse) differential pressure and afterfilter differential pressure (as applicable); and

(b) At least once every 12 months:

(A) Inspect the ductwork and emission control device housing for leakage;

(B) Inspect the interior of the emission control device for structural integrity and, if a fabric filter (baghouse) is used, to determine the condition of the fabric filter; and

(C) Record the date, time and results of the inspection.

(2) Each Tier 2 CAGM must perform the following monitoring on each emission control device used to comply with this rule:

(a) At least once each day, observe and record the inlet temperature and the fabric filter (baghouse) differential pressure and afterfilter differential pressure (as applicable); and

(b) At least once every 12 months:

(A) Inspect the ductwork and emission control device housing for leakage;

(B) Inspect the interior of the emission control device for structural integrity and, and if a fabric filter (baghouse) is used, to determine the condition of the fabric filter; and

(C) Record the date, time and results of the inspection.

(3) CAGMs must observe and record any parameters specified in a DEQ approval of the Notice of Intent to Construct applicable to a control device.

(4) If a bag leak detection system is used, the CAGM must develop and submit to DEQ for approval a site-specific monitoring plan for each bag leak detection system. The CAGM must operate and maintain the bag leak detection system according to the site-specific monitoring plan at all times. Each monitoring plan must describe the items in subsections (a) through (f).

(a) Installation of the bag leak detection system;

(b) Initial and periodic adjustment of the bag leak detection system, including how the alarm set-point will be established;

(c) Operation of the bag leak detection system, including quality assurance procedures;

(d) How the bag leak detection system will be maintained, including a routine maintenance schedule and spare parts inventory list;

(e) How the bag leak detection system output will be recorded and stored; and

(f) Corrective action procedures as specified in section (5). In approving the site-specific monitoring plan, DEQ may allow owners and operators more than 3 hours to alleviate a specific condition that causes an alarm if the owner or operator identifies in the monitoring plan this specific condition as one that could lead to an alarm, adequately explains why it is not feasible to alleviate this condition within 3 hours of the time the alarm occurs, and demonstrates that the requested time will ensure alleviation of this condition as expeditiously as practicable.

(5) For each bag leak detection system, the CAGM must initiate procedures to determine the cause of every alarm within 1 hour of the alarm. Except as provided in subsection (4)(f), the CAGM must alleviate the cause of the alarm within 3 hours of the alarm by taking all necessary corrective actions. Corrective actions may include, but are not limited to the following:

(a) Inspecting the fabric filter for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in PM emissions;

(b) Sealing off defective bags or filter media;

(c) Replacing defective bags or filter media or otherwise repairing the control device;

(d) Sealing off a defective fabric filter compartment;

(e) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system; and

(f) Shutting down the process producing the PM emissions.

(6) For each bag leak detection system, the CAGM must keep the following records:

(a) Records of the bag leak detection system output;

(b) Records of bag leak detection system adjustments, including the date and time of the adjustment, the initial bag leak detection system settings, and the final bag leak detection system settings; and

(c) The date and time of all bag leak detection system alarms, the time that procedures to determine the cause of the alarm were initiated, the cause of the alarm, an explanation of the actions taken, the date and time the cause of the alarm was alleviated, and whether the alarm was alleviated within 3 hours of the alarm.

Stat. Auth.: ORS 468.020, 468A.025, & 468A.040
Stats. Implemented: ORS 468A.025, & 468A.040
Hist.: DEQ 4-2016(Temp), f. & cert. ef. 4-21-16 thru 10-17-16; DEQ 10-2016, f. & cert. ef. 10-3-16

340-244-9090
Colored Art Glass Manufacturing Facility Rules; Other Glassmaking HAPs

(1) If DEQ determines that ambient concentrations of a glassmaking HAP in the area of a CAGM pose an unacceptable risk to human health and that emissions from a glassmaking furnace at the CAGM are a contributing factor, then DEQ must set a limit on the CAGM's use of the glassmaking HAP of concern, by agreement or in a permit, to reduce such risk. DEQ must consult with the Oregon Health Authority when applying this rule.

(2) Exceeding the limits established under the authority of this rule is a violation of this rule.

Stat. Auth.: ORS 468.020, 468A.025, & 468A.040
Stats. Implemented: ORS 468A.025, & 468A.040
Hist.: DEQ 4-2016(Temp), f. & cert. ef. 4-21-16 thru 10-17-16; DEQ 10-2016, f. & cert. ef. 10-3-16

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Department of Fish and Wildlife
Chapter 635

Rule Caption: Ongoing Columbia River Fall Recreational Salmon Seasons Modified.
Adm. Order No.: DFW 122-2016(Temp)
Filed with Sec. of State: 9-22-2016
Certified to be Effective: 9-23-16 thru 12-31-16
Notice Publication Date:
Rules Amended: 635-023-0130
Rules Suspended: 635-023-0130(T)
Subject: This amended rule extends Chinook retention in the ongoing Buoy-10 and lower Columbia River recreational salmon fisheries through September 30, 2016. With this harvest modification, the fishery continues to meet species and stock-specific allocations while remaining within ESA guidelines. Modifications are consistent with action taken September 22, 2016 by the Departments of Fish and Wildlife for the States of Oregon and Washington at a meeting of the Columbia River Compact.
Rules Coordinator: Michelle Tate—(503) 947-6044

635-023-0130
Fall Sport Fishery

(1) The **2016 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2016 Oregon Sport Fishing Regulations**.

(a) Buoy 10. In the area described as: From the Buoy 10 line upstream to a line projected from Rocky Point on the Washington shore through red buoy #44 to red marker #2 at Tongue Point on the Oregon shore:

(A) From August 1 through December 31: Retention of adipose fin-clipped coho salmon (16-inches or longer) and adipose fin-clipped steelhead is allowed. Effective August 1 through December 31, the daily bag limit for steelhead is one fish.

(B) From August 1 through September 14: Retention of adult Chinook salmon (24-inches or longer, fin-clipped or not) is allowed. The daily bag limit is two salmonids, but may not include more than one Chinook or one steelhead.

(C) From September 15 through September 30: Only hatchery Chinook (adipose or left-ventral fin-clipped) may be retained. Either clip must have a healed scar at the location of the clipped fin. The daily bag limit is two salmonids but may not include more than one hatchery Chinook or one hatchery steelhead.

(D) From October 1 through December 31: Retention of adult Chinook (fin-clipped or not) is allowed. The daily adult bag limit is two adult salmonids but may not include more than one steelhead. Chinook jacks (12-24 inches, fin-clipped or not) and adipose fin-clipped coho jacks may be retained. The daily bag limit for jack salmon in Oregon is five fish.