

Date: Jan. 28, 2011

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item H, Rule adoption: Heat Smart Program for residential woodstoves and other solid fuel burning devices
February 16-18, 2011, EQC meeting

Why this is Important This proposed rulemaking implements Senate Bill 102, a 2009 legislative measure designed to protect Oregonians from wood smoke by accelerating the turnover of older uncertified woodstoves.

DEQ recommendation and EQC motion DEQ recommends that the EQC adopt the proposed revisions to Oregon Administrative Rules, Chapter 340, divisions 12 and 262 as presented in attachment A. DEQ also recommends that the commission amend the Oregon Clean Air Act implementation plan (OAR 340-200-0040) as presented in attachment A to include these revised rules as a revision to the Oregon Clean Air Act Implementation Plan, and that the commission authorize DEQ to submit these revisions to the U.S. Environmental Protection Agency for approval as revisions to Oregon's Clean Air Act Implementation Plan.

Background and need for rulemaking **Concerns about wood smoke**
Wintertime residential wood burning is a significant source of air pollution, including fine particulate and air toxics. Smoke from woodstoves and other wood heating devices can be a primary reason that communities such as Klamath Falls and Oakridge do not meet federal health standards for fine particulate matter. Residential wood burning is also a significant source of air pollution in a dozen other communities that are at risk from elevated fine particulate levels. This rulemaking is a long-term strategy to improve air quality by accelerating the turnover of older, uncertified wood burning devices.

Senate Bill 102 requirements

Senate Bill 102 requires the commission to establish a program requiring the removal and destruction of noncertified woodstoves upon home sale. It also authorizes the commission to set emission standards for a broader range of home wood-heating devices, including outdoor wood-fired boilers and other wood burning devices that are currently exempt from EPA's woodstove emissions certification requirements. Senate Bill 102 also makes it clear prohibited materials, such as garbage, may not be burned in a woodstove or fireplace.

Regulated devices under DEQ's new woodstove rules

In 1984, Oregon was the first state in the nation to require emissions certification of new wood burning stoves. EPA quickly followed with national emission standards in 1988, but has not revised the 20-year-old woodstove standard since then. At that time, only a handful of woodstove models were exempt from emission standards. Today, EPA's exemption list has over 260 devices because EPA's current definition of "woodstove" is too narrow. This allows hundreds of models of uncertified residential wood burning devices, such as outdoor residential wood boilers, to be sold because they are technically exempt by EPA. The Heat Smart rules will expand the definition of "woodstove" to "solid fuel burning device," preventing these exempt devices from being sold in Oregon unless they meet EPA certification standards or any equivalent standard approved by the commission.

Effect of rule

Uncertified stove removal upon home sale – notification and destruction

Pursuant to statute, the stove removal requirements went into effect starting Aug. 1, 2010. DEQ's proposed rules establish procedures to streamline implementation of these requirements and verify that uncertified stoves are removed and destroyed upon home sale. For example, the rules require homeowners to notify DEQ and obtain a receipt verifying the stove was destroyed. DEQ proposed requiring a receipt as proof of destruction to ensure that uncertified solid fuel burning devices are not re-sold or illegally installed in another home.¹ Any metal recycler, landfill operator, scrap metal dealer, hearth products store, or anyone willing to take responsibility for ensuring the stove is destroyed to the extent that it cannot be used as a heating device again can issue these receipts. Many uncertified stoves have already been removed upon home sale since the statute became effective in August. DEQ has provided guidance to Realtors® and homeowners who have been providing proof of destruction and notification to DEQ. This rulemaking fully implements the stove removal provisions of Senate Bill 102.

Wood burning devices subject to emission standards

The proposed rules will incorporate a broader range of home wood-heating devices, including outdoor wood-fired boilers and other EPA-exempt wood burning devices, and subject them to the federal emission standards for woodstoves. These devices will no longer be able to be sold in Oregon unless they demonstrate compliance with federal emission standards.

Effect on small business

Businesses such as local hearth retailers that sell these uncertified (EPA-exempt) devices will incur reduced sales because they cannot sell these devices. While the loss of these sales will have a negative impact, overall the proposed rules are not expected to have a significant detrimental effect on their businesses because they

¹ Other DEQ rules and state building code also prohibit the installation of uncertified woodstoves.

will be selling different appliances, not necessarily fewer. The majority of small retail businesses, such as hearth products retailers, sell certified stoves and other heating devices such as pellet or natural gas stoves that would not be affected by DEQ's Heat Smart regulations. These devices make up the bulk of their retail sales, which could benefit from increased demand due to the requirement to remove uncertified stoves upon home sale.

Outdoor wood boiler dealers

These rules will have an adverse effect on small businesses that sell outdoor wood boilers. During the comment period, DEQ heard from four local wood boiler retailers, a wood boiler manufacturer, and the hearth products association about how DEQ's rules would prohibit the sale of these devices in Oregon. DEQ understands those concerns; however, DEQ has serious concerns about the potential for excessive pollution from these devices and the subsequent health effects on local residents. With large fireboxes, smoldering fires, and short smokestacks, outdoor wood boilers can create heavy smoke and release it close to the ground, where it lingers and exposes the community to nuisance conditions and potential health risks. In particular, there are many areas in Oregon where residential wood burning can cause a community to exceed federal air quality health standards for particulate matter. These devices have become a problem in other areas of the U.S., and many cities have either banned outdoor wood boilers directly, or states like Washington have adopted very stringent emission standards that effectively do not allow the sale of these devices in that state.

DEQ has spent the past twenty years investing in various woodstove changeouts and education campaigns across Oregon to remove older, polluting uncertified woodstoves. Allowing uncertified outdoor wood boilers in Oregon could undermine past efforts to reduce particulate pollution. Once installed, these devices could emit high levels of pollution for several decades. With so many communities near or close to violating public health standards for fine particulate, these devices must be adequately regulated to protect public health. DEQ could revisit this issue in the future if new outdoor wood boiler technologies are developed that significantly reduce emissions from these devices to protect public health.

Improved safety in the home

Removing older uncertified stoves from service upon home sale can also improve home safety. Based on experience, DEQ believes that many of the old, uncertified stoves were improperly installed or not inspected to ensure they met existing building codes. The use of older, uncertified stoves which produce more wood smoke leads to creosote buildup, posing a potential fire hazard. Stove removal upon home sale will lead to new, safety-inspected installations if the old stove is replaced with a new heating system.

Implementation

DEQ intends to make compliance as easy as possible on everyone affected by the rules through technical assistance, outreach and a user-friendly reporting process. DEQ has been working with Realtors®, hearth dealers, chimney sweeps and contractors for the past nine months to help inform them of the requirements by conducting trainings and providing educational materials so that they can help inform their clients of the law. Realtors® have been very effective in getting the word out about the requirements. DEQ has also established a web-based reporting tool to make it easier for homeowners to notify DEQ that they have removed and destroyed stoves. DEQ will continue to work closely with Realtors® to help inform homeowners of the requirements.

Burning prohibited materials indoors

The proposed rules also establish penalties for the burning of prohibited materials indoors, as required under ORS 468A.467. The rules make the penalties consistent with existing fines associated with outdoor burning of prohibited materials.

Commission authority

The commission has authority to take this action under ORS 468 and 468A.

Stakeholder involvement

2009 legislation

DEQ worked with stakeholders on the 2009 legislation to authorize the commission to set more stringent emission standards for a broader range of home heating devices and to require the removal of uncertified woodstoves at the time of home sale. Stakeholders included representatives from the Oregon Hearth Patio and Barbecue Association, the Oregon Association of Realtors and the League of Oregon Cities.

Rule development

DEQ advisory committee

DEQ convened an advisory committee in April 2010 to discuss a number of practical issues regarding the implementation of the woodstove removal requirement. The committee included a local government representative, real estate brokers, woodstove dealers, contractors and a metal recycler. Four of the committee members were from Klamath Falls and Medford, areas that already have similar ordinances for woodstove removal upon home sale. These committee members provided insight on the successes and challenges of their programs. DEQ reconvened the committee in June 2010 to discuss the fiscal and economic impacts of the rule, specifically its impacts on small businesses. A list of committee members is provided in attachment B.

Public hearings

DEQ published information on its website and used its email subscription service to people about the advisory committee and proposed rulemaking. DEQ contacted

over 2,500 people, including Realtors®, hearth products dealers and Oregon residents, who subscribed to receive updates on woodstove issues. DEQ also sent out targeted e-mails to real estate associations and boards across the state and contacted the Oregon Construction Contracting Board to include information in its monthly newsletter that is distributed to all licensed contractors. DEQ presented information about the statutory requirements and proposed rules to five different Realtor® groups and the Oregon Hearth Patio and Barbecue Association. DEQ also held five public hearings in cities throughout the state.

Cross-program coordination

DEQ coordinated internally within the air and solid waste programs to ensure the metal recyclers, landfill operators and other potential “disposal” facilities were aware of the proposed rules and their potential impact. DEQ created a simple and easy process for a homeowner to dispose of an uncertified stove without adding any implementation burdens to any disposal facility.

Public comment

DEQ held a public comment period from Sept. 21, 2010, through Oct. 29, 2010, which included public hearings in Medford, Eugene, Portland, Burns and Pendleton. Results of public input are provided in attachment C.

In response to comments received during the public comment period, DEQ is proposing a few minor changes. Most of these changes help clarify the intent of the rule, such as further defining what is meant by a “used device,” establishing a timeframe for how long a woodstove curtailment exemption lasts, and specifying the address information for a homeowner removing and destroying a stove. DEQ did make one substantive change regarding certification and testing for outdoor wood boilers, described in more detail under the key issues section.

In order to clarify the rules, DEQ proposed to repeal and then readopt entire sections of the current rules. Though this might make the proposed revisions appear more extensive than they are, the proposed revisions essentially renumber the current rules, as well as make changes required by and related to Senate Bill 102. Also, the public comments on the proposed rules did not raise concerns that the public was confused about the scope of revisions in the proposed rules.

Key issues

Outdoor wood boilers

In the proposed rules, DEQ is requiring that all solid fuel burning devices, including EPA-exempt heating devices such as outdoor wood boilers, meet federal testing and emission standards for woodstoves. This is based on DEQ’s concerns about emissions from the EPA-exempt devices that are currently not required to meet any certification standard.

Eight commenters, including retailers, the Hearth Patio and Barbecue Association, and a wood boiler manufacturer, indicated DEQ should regulate outdoor wood

boilers under EPA's voluntary Phase 2 certification program for outdoor wood boilers. EPA's voluntary program was set up to achieve emissions reductions from outdoor wood boilers in the absence of a federal rule. The voluntary certification program provides testing criteria and emissions requirements that outdoor wood boilers must meet in order to qualify for the program. Currently, any outdoor wood boiler qualifying for the program must meet Phase 2 requirements, under which devices must be at least 90 percent cleaner than older, unqualified outdoor wood boilers.

While EPA has established a voluntary outdoor wood boiler certification program, even the cleanest outdoor wood boilers under this program pollute too much to meet Oregon's air quality needs. According to the U.S. EPA, a Phase 2 outdoor wood boiler can emit 1.5 to three times more particle pollution than a certified woodstove. Outdoor wood boilers are designed to heat entire houses; if one were to compare similar home heating devices such as an oil or gas furnace, an outdoor wood boiler is 25 to 38 times higher emitting. In addition, DEQ also has concerns about several aspects of EPA's current voluntary test method for outdoor wood boilers. However, based on the public comment received, DEQ has revised the proposed rules to allow for DEQ approval of an emissions test methodology that a manufacturer can use to demonstrate that an outdoor wood boiler model meets standards equivalent to EPA's woodstove emission standard.² In the future, this could allow for Oregon sales of low-emission outdoor wood-fired boilers.

DEQ also recognizes the substantial costs incurred by any homeowner who recently purchased an EPA-qualified Phase 1 or 2 outdoor wood boiler. In order to protect consumers who made an investment in these devices, DEQ has modified the rules to not require already installed EPA-qualified Phase 1 or 2 outdoor wood boilers from being removed at time of home sale. Homeowners with an EPA-qualified outdoor wood boiler must notify DEQ of this device to be exempt from the removal requirements.

Next steps

Outreach to homeowners, Realtors® and hearth retailers

DEQ has been working closely with real estate associations, contractors, hearth products dealers and chimney sweeps to help inform homeowners about the uncertified woodstove removal requirements. DEQ conducted five training sessions with Realtors®, developed a presentation that was disseminated to realtor offices throughout the state and provided handouts and fact sheets for Realtors® to provide to homeowners. DEQ developed a web page for homeowners to

² EPA's current particulate matter emission standard for woodstoves equipped with a catalytic combustor is a weighted average of 4.1 g/hr, and for woodstoves without a catalytic combustor is a weighted average of 7.5 g/hr. EPA is in the process of developing revisions to its woodstove regulations, which may tighten particular matter emission standards, create emission standards for additional pollutants, include other solid fuel burning devices such as pellet stoves and outdoor wood boilers, and make other changes. EPA has not yet formally proposed any revisions, but plans to do so in 2011.

download any information relative to the program and created an on-line reporting form to make it easier for homeowners to notify DEQ of the woodstove removal. DEQ also worked with the Oregon Hearth Patio and Barbecue Association to have its members provide trainings and outreach to Realtors® all over the state. DEQ is continuing to provide outreach materials and information for homeowners to keep them informed of the removal requirements.

DEQ will inform hearth retailers and hardware stores that they cannot sell EPA exempt wood burning devices unless they are certified. DEQ will also contact outdoor wood boiler manufacturers and dealers to notify their clients about registering any EPA-qualified Phase 1 or 2 devices with DEQ, so that the homeowner will not be required to remove the device upon home sale.

Enforcement

Compliance with the woodstove removal rules will occur primarily through education and awareness, which is similar to how DEQ currently enforces the sale of uncertified woodstoves. Real estate agents play a crucial role in education and outreach. While the real estate agents will not be asked to enforce these regulations, they will provide information to their clients about the removal and destruction requirements. DEQ is also monitoring websites and other classified ads to stop any illegal sales of an uncertified stove. In addition, many insurance companies are now requiring the new homeowner to have proof of notification from DEQ that a stove has been removed and destroyed before they will insure the home.

State Implementation Plan

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

Attachments

- A. Proposed rule revisions
- B. Summary of public comments and agency responses
- C. Presiding 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
- G. Advisory committee membership

Available upon request

- 1. Senate Bill 102 as adopted June 18, 2009
- 2. Legal Notice of Hearing
- 3. Cover memorandum from public notice
- 4. Written comment received
- 5. Rule implementation plan

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Approved:

Division: _____

Section: _____

Report prepared by: Rachel Sakata
Phone: 503-229-5659

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 262

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

340-262-0010

Purpose

~~The purpose of this Division is to establish rules to control, reduce and prevent air pollution caused by residential woodheating emissions.~~

~~[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.460~~

~~Hist.: DEQ 25 1991, f. & cert. ef. 11-13-91; DEQ 4 1993, f. & cert. ef. 3-10-93; DEQ 14 1999, f. & cert. ef. 10-14-99, Renumbered from 340-034-0001~~

340-262-0020

Definitions

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

~~(1) "Administrator" means the administrator of the Environmental Protection Agency or the administrator's authorized representative.~~

~~(2) "Antique Woodstove" means a woodstove built before 1940 that has an ornate construction and a current market value substantially higher than a common woodstove manufactured in the same time period.~~

~~(3) "Commission" means the Environmental Quality Commission.~~

~~(4) "Consumer" means any person who buys a woodstove for personal use.~~

~~(5) "Cookstove" means an indoor woodburning appliance the design and primary purpose of which is to cook food.~~

~~(6) "Curtailement" means a period during which woodburning is prohibited due to the existence of an air stagnation condition.~~

~~(7) "Dealer" means any person engaged in selling wood stoves to retailers or other dealers for resale. A dealer which is also an Oregon retailer shall be considered to be only a retailer for purposes of this Division.~~

~~(8) "Destroy" means to demolish to such an extent that restoration is impossible.~~

~~(9) "Department" means the Oregon Department of Environmental Quality.~~

~~(10) "Director" means the Director of the Department or the Director's authorized delegates.~~

~~(11) "EPA" means the United States Environmental Protection Agency.~~

~~(12) "Federal Regulations" means **Volume 40 CFR, Part 60, Subpart AAA, Sections 60.530 through 60.539b**, dated **July 1, 1993**.~~

~~(13) "Fireplace" means a framed opening made in a chimney to hold an open fire.~~

~~(14) "Manufacturer" means any person who imports a woodstove, constructs a woodstove or parts for woodstoves.~~

~~(15) "New Woodstove" means any woodstove that has not been sold, bargained, exchanged, given away or has not had its ownership transferred from the person who first acquired the woodstove from the manufacturer's dealer or agency, and has not been so used to have become what is commonly known as "second hand" within the ordinary meaning of that term.~~

~~(16) "Pelletstove" means a woodburning heating appliance which uses wood pellets as its primary source of fuel.~~

~~(17) "Retailer" means any person engaged in the sale of woodstoves directly to consumers.~~

~~(18) "Used Woodstove" means any woodstove that has been sold bargained, exchanged, given away, or has had its ownership transferred from a retailer, manufacturer's dealer or agent to a consumer.~~

~~(19) "Woodstove" or "Woodheater" means an enclosed, woodburning appliance capable of and intended for space heating and domestic water heating that meets all of the following criteria:~~

~~(a) An air to fuel ratio in the combustion chamber averaging less than 35 to 1 as determined by the test procedure prescribed in federal regulations, **40 CFR, Part 60, Subpart AAA, §60.534** performed at an accredited laboratory;~~

~~(b) A usable firebox volume of less than 20 cubic feet;~~

~~(c) A minimum burn rate less than 5 kg/hr as determined by the test procedure prescribed in federal regulations, **40 CFR, Part 60, Subpart AAA, §60.534** performed at an accredited laboratory; and~~

~~(d) A maximum weight of 800 kg. In determining the weight of an appliance for these purposes, fixtures and devices that are normally sold separately, such as flue pipe, chimney, heat distribution ducting, and masonry components that are not an integral part of the appliance or heat distribution ducting, shall not be included.~~

~~[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.480~~

~~Hist.: DEQ 11-1984, f. & ef. 6-26-84; DEQ 5-1990, f. 3-7-90, cert. ef. 7-1-90; DEQ 25-1991, f. & cert. ef. 11-13-91; Renumbered from 340-021-0100; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-034-0005~~

~~Woodstove Sales~~

~~340-262-0030~~

~~Requirements for Sale of Woodstoves~~

~~(1) Requirements applicable to the sale of new woodstoves:~~

~~(a) No person shall advertise to sell, offer to sell, or sell a new woodstove in Oregon unless the woodstove has been labeled for heating efficiency and tested, certified and labeled for emission performance in accordance with criteria, emission standards, and procedures specified in the federal regulations, **40 CFR, Part 60, Subpart AAA**;~~

~~(b) No manufacturer, dealer, retailer or individual shall alter the permanent certification label in any way from the label approved by the Administrator pursuant to federal regulations, **40 CFR, Part 60, Subpart AAA**;~~

~~(c) No manufacturer, dealer or retailer shall alter the removable label in any way from the label approved by the Administrator pursuant to federal regulations, **40 CFR, Part 60, Subpart AAA**.~~

~~(2) Requirements applicable for the sale of used woodstoves. A person shall not advertise to sell, offer to sell, or sell a used woodstove unless:~~

~~(a) The woodstove was certified by the Department or the Administrator on or after July 1, 1986, in accordance with emission performance and heating efficiency criteria applicable at the time of certification;~~

~~(b) The woodstove has permanently attached an emission performance label authorized by the Department or the EPA.~~

~~(3) Section (2) of this rule concerning used woodstoves that have not been certified shall not apply to the following:~~

~~(a) The selling by a consumer of a used woodstove that has not been certified by the Department to a person in the business of reusing, reclaiming or recycling scrap metal to be destroyed or used as scrap metal;~~

~~(b) The remittance of a used woodstove that has not been certified by the Department by a consumer to a retailer for the purpose of receiving a reduction in price on a new residential heating system.~~

~~[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.500~~

~~Hist.: DEQ 11-1984, f. & ef. 6-26-84; DEQ 5-1990, f. 3-7-90, cert. ef. 7-1-90; DEQ 25-1991, f. & cert. ef. 11-13-91; Renumbered from 340-021-0105; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-034-0010~~

340-262-0040

Exemptions

~~(1) A pelletstove is exempt from the following requirements:~~

~~(a) OAR 340-262-0110 through 340-262-0130, woodstove certification, and 340-262-0030, requirements applicable to the sale of woodstoves;~~

~~(b) OAR 340-262-0030(2), requirements applicable to the sale of used woodstoves;~~

~~(c) OAR 340-262-0200 through 340-262-0250, woodburning curtailment; and~~

~~(d) OAR 340-262-0300 through 340-262-0330, woodstove requirements.~~

~~(2) An enclosed woodheating appliance capable of and intended for residential space heating or domestic water heating is exempt from OAR 340-262-0030, requirements applicable to the sale of woodstoves, and 340-262-0110 through 340-262-0130, woodstove certification, provided the manufacturer holds a valid letter of exemption from the Administrator which verifies that the appliance is not a woodstove or woodheater as defined in 340-262-0020(19).~~

~~(3) An antique stove is exempt from the requirements of:~~

~~(a) OAR 340-262-0030(2), requirements applicable to the sale of used woodstoves; and~~

~~(b) OAR 340-262-0300 through 340-262-0330, woodstove requirements.~~

~~(4) A cookstove is exempt from the requirements of OAR chapter 340, division 262, except for 340-262-0200 through 340-262-0250, woodburning curtailment.~~

~~(5) A woodburning fireplace, woodstove or appliance operated within a household classified to be at less than or equal to 125 percent of the federal poverty level is exempt from the requirement of OAR 340-262-0200 through 340-262-0250, woodburning curtailment. The federal poverty level is published in the **Federal Register, Volume 56, Number 34, February 20, 1990, page 6859**, Department of Health and Human Services.~~

~~(6) A woodstove operated in a residence that is equipped solely with woodheat is exempt from the requirements of OAR 340-262-0200 through 340-262-0250, woodburning curtailment.~~

~~[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.480~~

~~Hist.: DEQ 11-1984, f. & ef. 6-26-84; DEQ 5-1990, f. 3-7-90, cert. ef. 7-1-90; DEQ 25-1991, f. & cert. ef. 11-13-91; Renumbered from 340-021-0110; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-034-0015~~

340-262-0050

Civil Penalties

~~Violations of OAR Chapter 340, Division 262 are subject to OAR Chapter 340, Division 12, Enforcement Procedures and Civil Penalties.~~

~~[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.480~~

~~Hist.: DEQ 25 1991, f. & cert. ef. 11 13 91; DEQ 4 1993, f. & cert. ef. 3 10 93; DEQ 14 1999, f. & cert. ef. 10 14 99, Renumbered from 340 034 0020~~

Woodstove Certification Program

340-262-0100

Applicability

~~(1) OAR 340-262-0100 through 340-262-0130 shall apply to any woodstove or woodheater.~~

~~(2) The following woodheating appliances are not subject to OAR 340-262-0100 through 340-262-0130:~~

~~(a) Open masonry fireplaces;~~

~~(b) Boilers;~~

~~(c) Furnaces; and~~

~~(d) Cookstoves.~~

~~[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.480~~

~~Hist.: DEQ 4 1993, f. & cert. ef. 3 10 93; DEQ 1 1994, f. & cert. ef. 1 3 94; DEQ 14 1999, f. & cert. ef. 10 14 99, Renumbered from 340 034 0045~~

340-262-0110

Emissions Performance Standards and Certification

~~(1) Unless exempted by the Department under OAR 340-262-0040, new woodstoves advertised for sale, offered for sale or sold in Oregon between July 1, 1990 and June 30, 1992 shall be certified by the Administrator pursuant to federal regulation as complying with the particulate matter emission limits specified in the federal regulations, **40 CFR, Part 60, Subpart AAA, §60.532(a).**~~

~~(2) Unless exempted by the Department under OAR 340-262-0040, new woodstoves advertised for sale, offered for sale, or sold in Oregon on or after July 1, 1992 shall be certified by the~~

~~Administrator pursuant to federal regulation as complying with the particulate matter emission limits specified in the federal regulations, **40 CFR, Part 40, Subpart AAA, §60.532(b).**~~

~~{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.480~~

~~Hist.: DEQ 11-1984, f. & ef. 6-26-84; DEQ 5-1990, f. 3-7-90, cert. ef. 7-1-90; DEQ 25-1991, f. & cert. ef. 11-13-91; Renumbered from 340-021-0115; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-034-0050~~

~~340-262-0120~~

~~General Certification Procedures~~

~~Any new woodstove sold in Oregon shall be considered to be in full compliance with Oregon emission performance standards and rated heating efficiency requirements if the manufacturer holds a valid Certificate of Compliance issued by the Administrator, pursuant to federal regulations, **40 CFR, Part 60, Subpart AAA.** Such a stove shall be considered Oregon certified without any further action by the Department.~~

~~{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.480~~

~~Hist.: DEQ 11-1984, f. & ef. 6-26-84; DEQ 5-1990, f. 3-7-90, cert. ef. 7-1-90; DEQ 25-1991, f. & cert. ef. 11-13-91; Renumbered from 340-021-0125; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-034-0060~~

~~340-262-0130~~

~~Labeling Requirements~~

~~New woodstoves sold in Oregon shall have affixed to them:~~

~~(1) A permanent label, in accordance with federal regulations, **40 CFR, Part 60, Subpart AAA, §60.536.**~~

~~(2) A point of sale removable label in accordance with federal regulations, **40 CFR, Part 60, Subpart AAA, §60.536.**~~

~~[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~~

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~~Hist.: DEQ 11-1984, f. & ef. 6-26-84; DEQ 5-1990, f. 3-7-90, cert. ef. 7-1-90; DEQ 25-1991, f. & cert. ef. 11-13-91; Renumbered from 340-021-0135; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-034-0070~~

Woodburning Curtailment

340-262-0200

Applicability

~~OAR 340-262-0200 through 340-262-0250 shall apply to any portion of the state:~~

~~(1) Where the Department has determined that, under the requirements of the Clean Air Act, an enforceable woodburning curtailment program is required as an emission reduction control strategy for a PM₁₀ nonattainment area and the Department has determined that the local government or regional authority has failed to adopt or adequately implement the required woodburning curtailment program. In determining whether a local government or regional authority has failed to adequately adopt or implement a curtailment program, the Department shall determine if a local government or regional authority:~~

~~(a) Has adopted an ordinance that requires the curtailment of residential woodheating at forecasted air pollution levels which are consistent with the curtailment conditions and requirements specified in OAR 340-262-0210(1) and 340-262-0220(1) and (2);~~

~~(b) Is issuing on a daily basis curtailment advisories to the public consistent with OAR 340-262-0230; and~~

~~(c) Is conducting surveillance for compliance and is taking adequate enforcement actions consistent with OAR 340-262-0240.~~

~~(2) Where the Department has determined that, under the requirements of the Clean Air Act, an enforceable woodburning curtailment program is required as an emission abatement strategy to respond to an air pollution emergency.~~

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

~~Stat. Auth.: ORS 468 & ORS 468A~~

~~Stats. Implemented: ORS 468A.515~~

~~Hist.: DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-034-0150~~

~~340-262-0210~~

~~Determination of Air Stagnation Conditions~~

~~The Department shall utilize appropriate data and technology to develop methodology criteria for a curtailment program that:~~

~~(1) For use as an emission reduction control strategy or contingency plan for PM₁₀ nonattainment areas:~~

~~(a) Calls a Stage I advisory when the PM₁₀ standard is being approached; and~~

~~(b) Calls a Stage II advisory, when an exceedance of the PM₁₀ standard is forecasted to be imminent.~~

~~(2) For use as an emission abatement strategy in order to respond to an air pollution emergency:~~

~~(a) Calls an Alert when PM₁₀ alert levels have been reached and are forecasted to continued; and~~

~~(b) Calls a Warning when PM₁₀ warning levels have been reached and are forecasted to continue;~~

~~(c) Alert and Warning levels are specified in OAR Chapter 340, Division 206.~~

~~[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.515~~

~~Hist.: DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-034-0155~~

~~340-262-0220~~

~~Prohibition on Woodburning During Periods of Air Stagnation~~

~~(1) During any designated Stage I advisory, the operation of any uncertified woodstove, fireplace, or woodburning appliance shall be prohibited unless exempted under the provisions of OAR 340-262-0040.~~

~~(2) During any designated Stage II advisory, the operation of any woodstove, fireplace, or woodburning appliance shall be prohibited unless exempted under the provisions of OAR 340-262-0040.~~

~~(3) During any designated PM₁₀-Alert, the operation of any uncertified woodstove, fireplace, or woodburning appliance shall be prohibited unless exempted under the provisions of OAR 340-262-0040.~~

~~(4) During any designated PM₁₀-Warning, the operation of any woodstove, fireplace, or woodburning appliance shall be prohibited unless exempted under the provisions of OAR 340-262-0040.~~

~~[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.515~~

~~Hist.: DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-034-0160~~

~~340-262-0230~~

~~Public Information Program~~

~~The Department or its designated representative shall implement a public information program to disseminate the daily air pollution advisory to the local community. The public information program shall include but may not be limited to the utilization of applicable local media including television, radio, and newspapers.~~

~~[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.025~~

~~Hist.: DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-034-0165~~

~~340-262-0240~~

~~Enforcement~~

~~(1) The Department or its designated representative shall monitor the level of compliance with curtailment requirements during designated periods of air stagnation.~~

~~(2) A rebuttable presumption of a violation shall arise if smoke is being emitted through a flue or chimney during a curtailment period unless the household from which smoke is being emitted has provided the Department or designated representative with information indicating that the household or its woodburning appliance is exempt from curtailment requirements in accordance with OAR 340-262-0040.~~

~~(3) Any person claiming an exemption to OAR 340-262-0200 through 340-262-0250 in accordance with OAR 340-262-0040 in response to a Notice of Noncompliance shall provide the Department with documentation which establishes eligibility for the exemption. The Department shall review the documentation and make a determination regarding the exemption status of the household, or woodheating appliance. The following documentation shall be submitted to the Department for review in order to establish exemption status under the criteria of OAR 340-262-0040:~~

~~(a) For households desiring low income exemption status a copy of the previous year tax returns. The tax return should reflect the total combined household income for the past year;~~

~~(b) A signed affidavit attesting to the sole source status of a home (see note);~~

~~(c) A signed affidavit attesting to the certification status of the home heating appliance (see note);~~

~~[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.025~~

~~Hist.: DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-034-0170~~

~~340-262-0250~~

~~Suspension of Department Program~~

~~(1) The Department shall suspend the operation and enforcement of OAR 340-262-0200 through 340-262-0240 in any area upon determination by the Department that the local government or regional air quality authority has adopted and is adequately implementing a woodburning curtailment program that is at least as stringent as the program outlined in OAR 340-262-0200 through 340-262-0240.~~

~~(2) In making a determination concerning the adequacy of a local or regional woodburning curtailment program, the Department shall consider whether or not the local government or regional authority:~~

~~(a) Has adopted an ordinance that requires the curtailment of residential woodheating at forecasted air pollution levels which are consistent with curtailment conditions specified in OAR 340-262-0210;~~

~~(b) Is issuing curtailment advisories to the public on a daily basis;~~

~~(c) Is conducting surveillance for compliance and is taking adequate enforcement actions;~~

~~(d) Any other information the Department determines is necessary to determine the adequacy of the curtailment program.~~

~~{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.515~~

~~Hist.: DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-034-0175~~

Woodstove Removal Contingency Program

340-262-0300

Applicability

~~OAR 340-262-0300 through 340-262-0330 shall apply to any area classified as a nonattainment area for PM₁₀ that does not achieve attainment by the applicable Clean Air Act deadline.~~

~~{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.480~~

~~Hist.: DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-034-0200~~

340-262-0310

Removal and Destruction of Uncertified Stove Upon Sale of Home

~~Except as provided for by OAR 340-262-0040, any uncertified woodstove shall be removed and destroyed by the seller upon the sale of a home.~~

~~{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.480~~

~~Hist.: DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-034-0205~~

340-262-0320

~~Home Seller's Responsibility to Verify Stove Destruction~~

~~Any person selling a home which contains an uncertified woodstove shall provide to the Department or the Department's designated representative prior to the sale of the home, a copy of a receipt from a scrap metal dealer verifying that the stove has been destroyed.~~

~~[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.480~~

~~Hist.: DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-034-0210~~

~~340-262-0330~~

~~Home Seller's Responsibility to Disclose~~

~~Any person selling a home in which an uncertified woodstove is present shall disclose to any potential buyer, buyer's agent or buyer's representative that the woodstove is uncertified, and must be removed and destroyed upon sale of the home.~~

~~[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.480~~

~~Hist.: DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-034-0215~~

340-262-0400

Purpose and Applicability of Rules

- (1) The State of Oregon promotes the use of cleaner solid fuel burning devices to reduce smoke created from wood heating and other solid fuels. Smoke from wood burning can be a significant source of air pollution and can have serious health consequences for people with asthma, respiratory or heart conditions or other illnesses. Children and the elderly are especially at risk.
- (2) This Division regulates the sale and use of residential and commercial solid fuel burning devices to implement Oregon's air quality regulations for public health and safety.

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

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

Stat. Auth.: ORS 468 & ORS 468A

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

340-262-0450

Definitions

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

- (1) "Antique woodstove" means a woodstove built before 1940 that has an ornate construction and a current market value substantially higher than a common woodstove manufactured during the same period.
- (2) "Central wood-fired furnace" means an indoor, wood-fired furnace that is thermostatically controlled, has a dedicated cold air inlet and dedicated hot air outlet, and is connected to heating ductwork for the entire residential structure.
- (3) "CFR" means Code of Federal Regulations.
- (4) "Consumer" means a person who buys a solid fuel burning device for personal use.
- (5) "Cookstove" means an indoor wood-burning appliance designed for the primary purpose of cooking food.
- (6) "Dealer" means a person that sells solid fuel burning devices to retailers or other dealers for resale. For the purpose of this Division, a dealer that is also an Oregon retailer shall be considered to be only a retailer.
- (7) "DEQ" means Oregon Department of Environmental Quality.
- (8) "Destroy" means to demolish or decommission to the extent that restoration or reuse as a heating device is impossible.

- (9) "EPA" means United States Environmental Protection Agency.
- (10) "EQC" means Environmental Quality Commission
- (11) "Federal Regulations" means 40 CFR, Part 60, Subpart AAA as in effect on July 1, 2010.
- (12) "Fireplace" means a site-built or factory-built masonry fireplace that is designed to be used with an open combustion chamber and that is without features to control air-to-fuel ratios.
- (13) "Hydronic heater" means a fuel-burning device which may be equipped with a heat storage unit, and which is designed to:
 - (a) Burn wood or other automatically fed fuels such as wood pellets, shelled corn, and wood chips;
 - (b) Be installed according to the manufacturer's specifications either indoors or outdoors; and
 - (c) Heat building space and/or water via the distribution, typically through pipes, of a fluid heated in the device, typically water or a water/antifreeze mixture.
- (14) "Manufacturer" means a person who designs a solid fuel burning device, constructs a solid fuel burning device or constructs parts for solid fuel burning devices.
- (15) "Masonry heater" means a site-built or site-assembled, solid fueled heating device constructed of structural masonry mass used to store heat from intermittent fires burned rapidly in the structure's firebox and slow release the heat to the site. Such solid-fueled heating device must meet the design and construction specifications set forth in ASTM E 1602-03, "Guide for Construction of Solid Fuel Burning Masonry Heaters."
- (16) "New solid fuel burning device" or "new device" means a solid fuel burning device defined under ORS 468A.485(4)(a) that has not been sold, bargained, exchanged, given away, acquired secondhand, or otherwise had its ownership transferred from the person who first acquired it from a retailer.
- (17) "PM10" means particulate matter less than 10 microns.
- (18) "PM2.5" means particulate matter less than 2.5 microns.
- (19) "Pellet stove" means a heating device that uses wood pellets, or other biomass fuels designed for use in pellet stoves, as its primary source of fuel.
- (20) "Phase 1 emission level qualified model" is a model of a hydronic heater that achieves an average emission level of 0.60 lbs/million Btu heat input or less for all fuel types listed in the owner's manual and/or mentioned in marketing/sales materials, as acknowledged by EPA in writing to the manufacturer as part of EPA's acceptance of the model as a qualified model.

(21) "Phase 2 emission level qualified model" is a model of a hydronic heater that achieves an average emissions level of 0.32 lbs/million Btu heat output or less for all fuel types listed in the owner's manual and/or mentioned in marketing/sales materials, and that did not exceed 18.0 grams/hr of fine particles in any individual test run that was used in the calculation of the average, as acknowledged by EPA in writing to the manufacturer as part of EPA's acceptance of the model as a qualified model pursuant to the EPA Hydronic Heater Program Phase 2 Partnership Agreement.

(22) "Residential structure" has the meaning given that term in ORS 701.005.

(23) "Retailer" means a person engaged in the sale of solid fuel burning devices directly to consumers.

(24) "Solid fuel burning device" or "device" means a woodstove or any other device that burns wood, coal or other nongaseous or non-liquid fuels for aesthetic, space-heating or water-heating purposes in or for a private residential structure or a commercial establishment and that has a heat output of less than one million British thermal units per hour. Solid fuel burning device does not include:

(a) Fireplace;

(b) Antique stove;

(c) Pellet stoves;

(d) Masonry heaters;

(e) Central, wood-fired furnaces; and

(f) Saunas.

(25) "Trash burner" means any equipment that is used to dispose of waste by burning and has not been issued an air quality permit under ORS 468A.040.

(26) "Treated Wood" means wood of any species that has been chemically impregnated, painted or similarly modified to prevent weathering and deterioration.

(27) "Used solid fuel burning device" or "used device" means a solid fuel burning device that has been sold, bargained, exchanged, given away, or otherwise has had its ownership transferred.

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

Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468A.460 to 468A.515

340-262-0500

Certification of Solid Fuel Burning Devices for Sale as New

- (1) By order, the department may certify solid fuel burning devices that have been certified by the United States Environmental Protection Agency as meeting EPA emission performance standards and certification labeling standards pursuant to:

 - (a) 40 CFR part 60, subpart AAA, as in effect on July 1, 2010; or
 - (b) Any equivalent or more stringent standard adopted by the United States Environmental Protection Agency subsequent to July 1, 2010.
- (2) By order, the department may certify solid fuel burning devices that have not been certified by the United States Environmental Protection Agency, but that were previously certified by the department as meeting emission performance standards and certification labeling standards on or after July 1, 1986 pursuant to ORS 468A.480.
- (3) By order, the department may certify any hydronic heater that has been accepted by EPA as a Phase 1 or Phase 2 emission level qualified model pursuant to the EPA Hydronic Heater Program, and that meets the requirements of subsections (a) and (b) below:

 - (a) The hydronic heater must have a permanent “qualifying label” attached that meets the requirements of the EPA Hydronic Heater Program Phase 2 Partnership Agreement or similar agreement for the EPA Phase 1 program; and
 - (b) The hydronic heater must have been installed by March 1, 2011, and the owner of the hydronic heater must confirm notice of installation to the department, on a department provided form, by July 1, 2011.
- (4) By order, the department may certify solid fuel burning devices that have been tested using a test method that is equivalent to the test methods in 40 CFR part 60, subpart AAA as in effect on July 1, 2010, if:

 - (a) Testing is done by a method that has been determined to be equivalent by DEQ; and
 - (b) The test results show the solid fuel burning device emits no more than 7.5 g/hr.
- (5) The department shall maintain a list of all devices certified pursuant to this rule.

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

Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468A.460 to 468A.515

340-262-0600

New and Used Solid Fuel Burning Devices Sold in Oregon

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

(a) The device has been certified for sale as new by DEQ pursuant to OAR 340-262-0500, or by EPA pursuant to 40 CFR part 60, subpart AAA; and

The device is permanently labeled as certified, or in the case of a hydronic heater is
(b) permanently labeled as a Phase 1 or Phase 2 emission level qualified model, with a label authorized by DEQ or EPA.

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

(a) Pellet stoves;

(b) Antique woodstoves;

(c) Cookstoves

(d) Fireplaces;

(e) Masonry heaters;

(f) Central, wood-fired furnaces; and

(g) Saunas.

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

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

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

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

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

Stat. Auth.: ORS 468 & ORS 468A

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

340-262-0700

Removal and Destruction of Used Solid Fuel Burning Devices

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

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

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

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

(b) Destroy all used solid fuel burning devices, pursuant to the definition of "destroy" in OAR 340-262-0450, by taking them to a facility or entity that will render the devices incapable of being used as heating devices.

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

(A) Date of delivery to place of destruction;

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

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

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

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

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

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

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

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

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

(a) Fireplaces;

(b) Cookstoves;

(c) Antique woodstoves;

(d) Pellet stoves;

(e) Masonry heaters;

(f) Central wood-fired furnaces; and

(g) Saunas.

Stat. Auth.: ORS 468 & ORS 468A

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

340-262-0800

Wood Burning and Other Heating Devices Curtailment Program

(1) Applicability.

- (a) The wood burning and other heating devices curtailment program applies to any portion of the state where required as an emission reduction strategy or contingency plan for PM10 or PM 2.5 nonattainment or maintenance areas as an element of the State of Oregon Clean Air Act Implementation Plan adopted under OAR 340-200-0040.
- (b) If a local government or regional authority has not adopted or is not adequately implementing a curtailment program in any area of the state where such a program is required, the Department will operate and enforce a program to curtail solid fuel heating during periods of air stagnation.
- (c) To determine whether a local government or regional authority has failed to adopt or adequately implement a curtailment program, the Department shall consider whether a local government or regional authority:
 - (A) Has adopted an ordinance that requires the curtailment of solid fuel heating at forecasted air pollution levels which are consistent with the curtailment conditions and requirements specified in sections (3) and (4);
 - (B) Is issuing on a daily basis, curtailment advisories to the public consistent with section (5); and
 - (C) Is conducting surveillance for compliance and is taking adequate enforcement actions consistent with sections (6) to (8).

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

- (a) Solid fuel burning devices or other solid fuel heating operated within a household classified to be less than or equal to 125 percent of the current federal poverty income guidelines accessible through the Oregon Center for Public Policy;
- (b) Solid fuel burning devices operated in a residence where the solid fuel burning device is the sole heating source; and
- (c) Pellet stoves, unless the pellet stove is located in a nonattainment area in this state that does not attain compliance with standards for particulate matter established by the commission pursuant to ORS 468A.025.

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

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

- (b) *Stage II advisory* when an exceedance of the PM10 or PM 2.5 standard is forecast as imminent.
- (4) **Curtailed burning.** Unless exempt under section (2), the wood burning curtailment program prohibits operation of:
 - (a) All heating by means of solid fuel, including but not limited to solid fuel burning devices, fireplaces, masonry heaters, pellet stoves, trash burners and all devices described in ORS 468A.485(4)(b), that were not certified for sale as new by DEQ or EPA, during a designated Stage I advisory when the PM10 or PM2.5 standard is being approached.
 - (b) All heating by means of solid fuel, including but not limited to solid fuel burning devices, fireplaces, masonry heaters, pellet stoves, trash burners and all devices described in ORS 468A.485(4)(b), whether or not those devices were certified for sale as new by DEQ or EPA, during a designated Stage II advisory when an exceedance of the PM10 or PM2.5 standard is forecasted to be imminent.
- (5) **Daily air pollution advisories.** DEQ or the DEQ representative (local or regional government) must disseminate daily air pollution advisories to the local community that must include any air stagnation levels under section (3) and curtailed burning under section (4) during the winter wood heating season.
- (6) **Monitoring and enforcement.** DEQ or the DEQ representative:
 - (a) Must monitor compliance with the wood burning curtailment program during curtailed burning under section (4); and
 - (b) May initiate enforcement action for smoke emitted through a flue or chimney during curtailed burning under section (4). Smoke emitted during curtailed burning raises a rebuttable presumption of a violation subject to OAR chapter 340, division 12.
- (7) **Exempt from enforcement action.** A person may respond to an enforcement action initiated under subsection (6)(b) by submitting a signed affidavit and documentation sufficient for DEQ to establish:
 - (a) For a low income exemption under subsection (2)(a), a copy of the previous year tax returns with redacted Social Security Numbers. The tax return must reflect the total combined household income for the past year; or
 - (b) For a sole-source heating exemption under subsection (2)(b), a signed affidavit attesting to the device's status as the sole heating source of the residence. The exemption is valid for the current woodheating season in which the person is claiming the exemption.

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

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

(b) Denial of exempt status including the reason.

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

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

Stat. Auth.: ORS 468 & ORS 468A

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

340-262-0900

Materials Prohibited from Burning

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

(1) (a) Garbage;

(b) Treated wood;

(c) Plastic or plastic products;

(d) Rubber or rubber products;

(e) Animal carcasses;

(f) Products that contain asphalt;

(g) Waste petroleum products;

(h) Paint;

- (i) Chemicals;
 - (j) Products containing lead, mercury or other heavy or toxic metals;
 - (k) Materials containing asbestos; and
 - (l) Particleboard
- (2) and /or paper or paper products, except for paper used to kindle a fire;

Stat. Auth.: ORS 468 & ORS 468A

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

**DIVISION 200
GENERAL AIR POLLUTION
PROCEDURES AND DEFINITIONS**

340-200-0040

State of Oregon Clean Air Act Implementation Plan

- (1) (This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, 42 U.S.C.A 7401 to 7671q.
- (2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval. The State Implementation Plan was last modified by the Commission on ~~April 29,~~February 18, 20110.
- (3) Notwithstanding any other requirement contained in the SIP, the Department may:
 - (a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

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

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

Stat. Auth.: ORS 468.020 Stats. Implemented: ORS 468A.035 Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000 f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 11-2008, f. & cert. ef. 8-29-08;

DEQ 12-2008, f. & cert. ef. 9-17-08; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 3-2009, f. & cert. ef. 6-30-09; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 2-2010, f. & cert. ef. 3-5-10; DEQ 5-2010, f. & cert. ef. 5-21-10

DIVISION 12

ENFORCEMENT PROCEDURE AND CIVIL PENALTIES

340-012-0054

Air Quality Classification of Violations

(1) Class I:

- (a) Constructing a new source or modifying an existing source without first obtaining a required New Source Review/Prevention of Significant Deterioration (NSR/PSD) permit;
- (b) Operating a major source, as defined in OAR 340-200-0020, without first obtaining the required permit;
- (c) Exceeding a Plant Site Emission Limit (PSEL);
- (d) Failing to install control equipment or meet performance standards as required by New Source Performance Standards under OAR 340 division 238 or National Emission Standards for Hazardous Air Pollutant Standards under OAR 340 division 244;
- (e) Exceeding a hazardous air pollutant emission limitation;
- (f) Failing to comply with an Emergency Action Plan;
- (g) Exceeding an opacity or emission limit (including a grain loading standard) or violating an operational or process standard, that was established pursuant to New Source Review/Prevention of Significant Deterioration (NSR/PSD), or the Western Backstop SO₂ Trading Program;
- (h) Exceeding an emission limit or violating an operational or process standard that was established to limit emissions to avoid classification as a major source, as defined in OAR 340-200-0020;
- (i) Exceeding an emission limit, including a grain loading standard, by a major source, as defined in OAR 340-200-0020, when the violation was detected during a reference method stack test;

- (j) Failing to perform testing or monitoring, required by a permit, rule or order, that results in failure to show compliance with a Plant Site Emission Limit (PSEL) or with an emission limitation or a performance standard set pursuant to New Source Review/Prevention of Significant Deterioration (NSR/PSD), National Emission Standards for Hazardous Air Pollutants (NESHAP), New Source Performance Standards (NSPS), Reasonable Achievable Control Technology (RACT), Best Achievable Control Technology (BACT), Maximum Achievable Control Technology (MACT), Typically Achievable Control Technology (TACT), Lowest Achievable Emissions Rates (LAER) or adopted pursuant to section 111(d) of the Federal Clean Air Act;
- (k) Causing emissions that are a hazard to public safety;
- (l) Violating a work practice requirement for asbestos abatement projects;
- (m) Storing or accumulating friable asbestos material or asbestos-containing waste material;
- (n) Conducting an asbestos abatement project, by a person not licensed as an asbestos abatement contractor;
- (o) Violating an OAR 340 division 248 disposal requirement for asbestos-containing waste material;
- (p) Failing to hire a licensed contractor to conduct an asbestos abatement project;
- (q) Openly burning materials which are prohibited from being open burned anywhere in the state by OAR 340-264-0060(3), or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262-0900(1).
- (r) Failing to install certified vapor recovery equipment.
- (s) Delivering for sale a noncompliant vehicle by an automobile manufacturer in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257.
- (t) Exceeding an Oregon Low Emission Vehicle average emission limit set forth in OAR 340 division 257.
- (u) Failing to comply with Zero Emission Vehicle (ZEV) sales requirements set forth in OAR 340 division 257.
- (v) Failing to obtain a Motor Vehicle Indirect Source Permit as required in OAR 340 division 257.
- (w) Selling, leasing, or renting a noncompliant vehicle by an automobile dealer or rental car agency in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257.

(2) **Class II:**

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

(3) Class III:

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

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

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

Stats. Implemented: ORS 468.020 & 468A.025

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

340-012-0140

Determination of Base Penalty

(1) Except for Class III violations and for penalties assessed under OAR 340-012-0155, the base penalty (BP) is determined by applying the type, class and magnitude of the violation to the

matrices set forth in this section. For Class III violations, no magnitude determination is required.

(2) \$8,000 Penalty Matrix:

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

- (A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Title V permit or an Air Contaminant Discharge Permit (ACDP) issued pursuant to New Source Review (NSR) regulations or Prevention of Significant Deterioration (PSD) regulations, or section 112(g) of the federal Clean Air Act.
- (B) Open burning violations as follows:
 - (i) Any violation of an open burning statute, rule, permit or related order committed by a permitted industrial facility.
 - (ii) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned, except when committed by a residential owner-occupant.
- (C) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) by an automobile manufacturer.
- (D) Any violation of 468B.025(1)(a) or (1)(b), or of ORS 468B.050(1)(a) by a person without an National Pollutant Discharge Elimination System (NPDES) permit.
- (E) Any violation of a water quality statute, rule, permit or related order by:
 - (i) A person that has a NPDES permit, or that has or should have a Water Pollution Control Facility (WPCF) permit, for a municipal or private utility sewage treatment facility with a permitted flow of five million or more gallons per day.
 - (ii) A person that has a major industrial source NPDES permit.
 - (iii) A person that has a population of 100,000 or more, as determined by the most recent national census, and either has or should have a WPCF Municipal Stormwater Underground Injection Control (UIC) System Permit, or has a NPDES Municipal Separated Storm Sewer Systems (MS4) Stormwater Discharge Permit.
 - (iv) A person that has or should have a WPCF permit for a major vegetable or fruit processing facility, for a major mining operation involving over 500,000 cubic

yards per year, or for any mining operation using chemical leaching or froth flotation.

- (v) A person that installs or operates a prohibited Class I, II, III, IV or V UIC system, except for a cesspool.
- (F) Any violation of an underground storage tanks statute, rule, permit or related order committed by the owner, operator or permittee of 10 or more UST facilities or a person who is licensed or should be licensed by the department to perform tank services.
- (G) Any violation of a heating oil tank statute, rule, permit, license or related order committed by a person who is licensed or should be licensed by the department to perform heating oil tank services.
- (H) Any violation of ORS 468B.485, or related rules or orders regarding financial assurance for ships transporting hazardous materials or oil.
- (I) Any violation of a used oil statute, rule, permit or related order committed by a person who is a used oil transporter, transfer facility, processor or re-refiner, off-specification used oil burner or used oil marketer.
- (J) Any violation of a hazardous waste statute, rule, permit or related order by:
 - (i) A person that is a large quantity generator or hazardous waste transporter.
 - (ii) A person that has or should have a treatment, storage or disposal facility permit.
- (K) Any violation of an oil and hazardous material spill and release statute, rule, or related order.
- (L) Any violation of a polychlorinated biphenyls (PCBs) management and disposal statute, rule, permit or related order.
- (M) Any violation of ORS Chapter 465, UST or environmental cleanup statute, rule, related order or related agreement.
- (N) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or any violation of a solid waste statute, rule, permit, or related order committed by:
 - (i) A person that has or should have a solid waste disposal permit.
 - (ii) A person with a population of 25,000 or more, as determined by the most recent national census.

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

(A) Class I:

- (i) Major -- \$8000;
- (ii) Moderate -- \$4000;
- (iii) Minor -- \$2000.

(B) Class II:

- (i) Major -- \$4000;
- (ii) Moderate -- \$2000;
- (iii) Minor -- \$1000.

(C) Class III: \$750.

(3) \$6,000 Penalty Matrix:

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

- (A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have an ACDP permit, except for NSR, PSD and Basic ACDP permits.
- (B) Any violation of an asbestos statute, rule, permit or related order except those violations listed in section (5) of this rule.
- (C) Any violation of a vehicle inspection program statute, rule, permit or related order committed by an auto repair facility.
- (D) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) by an automobile dealer or an automobile rental agency.
- (E) Any violation of a water quality statute, rule, permit or related order committed by:
 - (i) A person that has a NPDES Permit, or that has or should have a WPCF Permit, for a municipal or private utility sewage treatment facility with a permitted flow of two million or more, but less than five million, gallons per day.

- (ii) A person that has a minor industrial source NPDES Permit, or has or should have a WPCF Permit, for an industrial source.
 - (iii) A person that has or should have applied for coverage under an NPDES or a WPCF General Permit, except an NPDES Stormwater Discharge 1200-C General Permit for a construction site of one acre or more, but less than five acres in size and except for an NPDES 700-PM General Permit for suction dredges.
 - (iv) A person that has a population of less than 100,000 but more than 10,000, as determined by the most recent national census, and has or should have a WPCF Municipal Stormwater UIC System Permit or has an NPDES MS4 Stormwater Discharge Permit.
 - (v) A person that has or should have a WPCF permit for a mining operation involving from 100,000 up to 500,000 cubic yards other than those operations using chemical leachate or froth flotation.
 - (vi) A person that owns, and that has or should have registered, a UIC system that disposes of wastewater other than stormwater or sewage.
- (F) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of five to nine UST facilities.
- (G) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by:
- (i) A person that has or should have a waste tire permit; or
 - (ii) A person with a population of more than 5,000 but less than or equal to 25,000, as determined by the most recent national census.
- (H) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a small quantity generator.
- (b) The base penalty values for the \$6,000 penalty matrix are as follows:
- (A) Class I:
- (i) Major -- \$6,000.
 - (ii) Moderate -- \$3,000.
 - (iii) Minor -- \$1,500.

(B) Class II:

- (i) Major -- \$3,000.
- (ii) Moderate -- \$1,500.
- (iii) Minor -- \$750.

(C) Class III: \$500.

(4) \$2,500 Penalty Matrix:

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

- (A) Any violation of any statute, rule, permit, license, or order committed by a person not listed under another penalty matrix.
- (B) Any violation of an air quality statute, rule, permit or related order committed by a person not listed under another penalty matrix.
- (C) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned by a residential owner-occupant.
- (D) Any violation of a vehicle inspection program statute, rule, permit or related order committed by a natural person, except for those violations listed in section (5) of this rule.
- (E) Any violation of a water quality statute, rule, permit, license or related order not listed under another penalty matrix and committed by:
 - (i) A person that has an NPDES permit, or has or should have a WPCF permit, for a municipal or private utility wastewater treatment facility with a permitted flow of less than two million gallons per day.
 - (ii) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that is more than one, but less than five acres.
 - (iii) A person that has a population of 10,000 or less, as determined by the most recent national census, and either has an NPDES MS4 Stormwater Discharge Permit or has or should have a WPCF Municipal Stormwater UIC System Permit.

- (iv) A person who is licensed to perform onsite sewage disposal services or who has performed sewage disposal services.
- (v) A person, except for a residential owner-occupant, that owns and either has or should have registered a UIC system that disposes of stormwater or sewage.
- (vi) A person that has or should have a WPCF individual stormwater UIC system permit.
- (F) Any violation of an onsite sewage disposal statute, rule, permit or related order, except for a violation committed by the residential owner-occupant.
- (G) Any violation of an UST statute, rule, permit or related order if the person is the owner, operator or permittee of two to four UST facilities.
- (H) Any violation, except a violation related to a spill or release, of a used oil statute, rule, permit or related order committed by a person that is a used oil generator.
- (I) Unless listed under another penalty matrix, any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a conditionally exempt generator if the violation does not impact the person's generator status.
- (J) Any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by a person with a population less than 5,000, as determined by the most recent national census.
- (K) Any violation of the labeling requirements of ORS 459A.675 through 459A.685.
- (L) Any violation of rigid pesticide container disposal requirements by a conditionally exempt generator of hazardous waste.
- (b) The base penalty values for the \$2,500 penalty matrix are as follows:
 - (A) Class I:
 - (i) Major -- \$2500;
 - (ii) Moderate -- \$1250;
 - (iii) Minor -- \$625.
 - (B) Class II:
 - (i) Major -- \$1250;

(ii) Moderate -- \$625;

(iii) Minor -- \$300.

(C) Class III: \$200.

(5) \$1,000 Penalty Matrix:

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

- (A) Any violation of an open burning statute, rule, permit or related order committed by a residential owner-occupant at the residence, not listed under another penalty matrix.
- (B) Any violation of visible emissions standards by operation of a vehicle.
- (C) Any violation of an asbestos statute, rule, permit or related order committed by a residential owner-occupant.
- (D) Any violation of an onsite sewage disposal statute, rule, permit or related order of OAR chapter 340, division 44 committed by a residential owner-occupant.
- (E) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of one UST facility.
- (F) Any violation of an HOT statute, rule, permit or related order not listed under another penalty matrix.
- (G) Any violation of a dry cleaning facility statute, rule, permit or related order.
- (H) Any violation of a statute, rule, permit or order relating to rigid plastic containers, except for violation of the labeling requirements under OAR 459A.675 through 459A.685.
- (I) Any violation of a statute, rule or order relating to the opportunity to recycle.
- (J) Any violation of OAR chapter 340, division 262 or other a-statute, rule, ~~permit~~ or order relating to solid fuel burning devices~~woodstoves~~, except a violation related to the sale of new or used solid fuel burning devices~~woodstoves~~ or the removal and destruction of used solid fuel burning devices.
- (K) Any violation of an UIC system statute, rule, permit or related order by a residential owner-occupant, when the UIC disposes of stormwater or sewage.

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

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

(A) Class I:

(i) Major -- \$1000;

(ii) Moderate -- \$500;

(iii) Minor -- \$250.

(B) Class II:

(i) Major -- \$500;

(ii) Moderate -- \$250;

(iii) Minor -- \$125.

(C) Class III: \$100.

Stat. Auth.: ORS 468.020 & 468.090 - 468.140

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

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

Summary of Public Comments and Agency Responses

Proposed Rules - Heat Smart Program for Residential Woodstoves and Other Solid Fuel Burning Devices

Prepared by: Rachel Sakata, Oregon Department of Environmental Quality
Date: December 10, 2010

Comment period	The Oregon Department of Environmental Quality took public comment on the proposed rulemaking for the Heat Smart Program for Residential Woodstoves and Other Solid Fuel Burning Devices. The comment period was open from Sept. 21, 2010, through Oct. 29, 2010.
Public hearings	<p>DEQ held the following public hearings on the proposed rules:</p> <ul style="list-style-type: none"> • Oct. 18, 2010, 6 p.m. DEQ – Medford Regional Office, Conference Room 221 Stewart Ave, Suite 201 Medford, OR 97501 1 person attended the hearing and testified • Oct. 19, 2010, 6 p.m. DEQ – Eugene Regional Office, Willamette Room 165 East 7th Ave, Suite 100 Eugene, OR 97401 1 person attended the hearing and testified • Oct. 20, 2010, 6 p.m. DEQ Headquarters, Room EQC-A 811 SW 6th Avenue Portland, OR 97204 2 people attended the hearing; 1 person testified • Oct. 27, 2010, 6 p.m. Burns City Hall, Council Chambers 242 South Broadway Ave Burns, OR 97220 6 people attended the hearing; 0 people testified • Oct. 28, 2010, 6 p.m. Pendleton State Office Building, 1st Floor Conference Room 700 SE Emigrant, #330 Pendleton, OR 97801 1 person attended the hearing and testified <p>Total attendance at public hearings: 11 persons Total number providing verbal testimony: 4 persons</p>
Organization of comments and responses	Summaries of the comments received and DEQ's response are provided below. Comments are summarized by issue category. The full public record is available for review by the public at the Portland DEQ office (811 SW 6th Ave.). Copies are available upon request.

Explanation of acronyms used in this document	DEQ = Department of Environmental Quality EPA = Environmental Protection Agency EQC = Environmental Quality Commission NESCAUM = Northeast States Coordinated Air Use Management NSPS = New source performance standard OWB = Outdoor wood boiler PM2.5 = Particulate matter under 2.5 microns in size SIP = State implementation plan WESTAR = Western States Air Resources Council
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Summary of comments and DEQ responses	
1. General opposition	<p>1) Through attrition alone, the stoves would be put out of service and the new laws aren't necessary. (1)</p> <p>2) The law should not require the removal of all uncertified stoves, only those that have been reported as causing a problem. (1)</p> <p>3) The program should rethink and stop now, as the newer woodstoves have no guarantee of less pollution, burning will last longer and create more toxic pollution than current conditions. The program should focus on banning all wood burning appliances and not rob the citizens' health and well being. (4)</p> <p><i>Response to all comments:</i> <i>In neighborhoods throughout Oregon, wintertime residential wood burning is a significant source of air pollution, including fine particulate and air toxics. There are still tens of thousands of old, high polluting uncertified wood burning devices in Oregon that contribute to unhealthy air. While woodstoves do get replaced eventually, many woodstoves were built to last for a long time - at least 20 years or longer- resulting in many old uncertified stoves still in homes. The 2009 legislature adopted SB 102, which requires removal of old stoves at the time of home sale, because attrition alone was not sufficient to address this air pollution problem. The proposed rules implement this existing 2009 law.</i></p> <p><i>This program focuses on the removal of old, uncertified stoves and does not require the replacement of an uncertified device with a new woodstove. A homeowner may choose not to replace a removed stove that is not the sole source of heat, or may choose to replace the old device with a new certified stove, pellet stove, or natural gas furnace. Many new certified stoves have features that prevent a user from "damping down" the fire and allowing smoke to billow out and create air pollution. Newer, certified stoves also emit two to seven times less pollution than an uncertified stove. Once the rule is adopted, DEQ also plans to focus on an educational campaign to inform homeowners about the new regulations and also to address other wood burning topics such as proper wood burning practices.</i></p>
2. Implementation	<p>How does DEQ plan to implement the law? (1)</p> <p><i>Response:</i> <i>Compliance with these rules will occur primarily through education and</i></p>

	<p><i>awareness, which is similar to how DEQ enforces the current ban on the sale of uncertified woodstoves. DEQ has been working with realtors, hearth dealers, chimney sweeps, and contractors for the past nine months to help inform them of the requirements, conducting trainings and providing educational materials so that they can help inform their clients of the law. Realtors have been especially helpful in getting the word out about the requirements. DEQ has also established a web-based reporting tool to make it easier for homeowners to notify DEQ that they have removed and destroyed the stove. Although notification to DEQ is not required until the rules are adopted, DEQ has already received over 137 submissions from homeowners.</i></p> <p><i>DEQ is also monitoring classified advertisement websites and other ads to stop illegal sales of uncertified stoves. In addition, many insurance companies are now requiring homebuyers to have proof of notification from DEQ that a stove has been removed and destroyed before they will insure homes. DEQ anticipates that its education, outreach, and monitoring efforts will achieve a high level of compliance overall. DEQ may also use civil penalties if necessary to address violations.</i></p>
<p>3. Hardship for home sales</p>	<p>1) I think the new law “stinks”. Due to the economy and lack of home sales, the last thing needed is another law to impose on home owners. (1)</p> <p>2) In some homes the stove is the only source of heat and banks will require a new stove before allowing financing of the home. Many people cannot afford to replace the stove. (1)</p> <p>3) For short sales, the homeowner won’t be able to pay for a new stove and it will likely be the realtor that will have to get a new wood stove installed. (1)</p> <p><i>Response to all comments:</i> <i>DEQ recognizes the potential hardship the stove removal requirement may pose for some home sellers in the current economic climate. However, over the long run, it is most efficient to remove these old stoves at time of home sale, when a home seller may have to address other home upgrades or changes to prepare the home for sale. Requiring old stove removal at the time of home sale benefits public health by reducing air pollution and improves home safety by replacing old, potentially unsafe stove installations.</i></p> <p><i>The rules allow either the seller or buyer to take responsibility for stove removal. This provides flexibility for the stove removal to be addressed in the most cost-effective way possible as part of a larger and more complex transaction. While failure to comply with the rules could result in a civil penalty, the rules also ensure that failure to comply will not unravel a home sale. In addition, DEQ has provided assistance to realtors facing the challenge of short sales or situations where a home seller cannot afford to replace a stove that is the only source of heat. In these instances, DEQ has recommended other state and local assistance agencies that could help with the replacement of a stove. These features are intended to minimize the negative impacts on a home sale transaction.</i></p> <p><i>To help low income individuals in areas with the most severe air pollution,</i></p>

	<p><i>DEQ has sought out funding to help with the turnover of old stoves. This includes the acquisition of \$2 million in federal stimulus money to facilitate the changeout of old uncertified stoves with new, cleaner burning devices in certain communities throughout the state. DEQ also hopes to establish a statewide woodstove changeout fund to assist all homeowners in the future.</i></p>
4. Removal requirements	<p>1) Stove should be removed by a licensed entity to reduce fraud, such as people trying to hold onto their old stove. (2)</p> <p><i>Response:</i> DEQ wants to provide as much flexibility as possible for homeowners. Therefore, DEQ proposes to give homeowners the option to either hire a licensed chimney sweep or to perform the work themselves. Requiring the licensing of entities to remove stoves could create an additional burden and increase removal costs for a homeowner. However, DEQ is educating realtors, potential home buyers and lenders of the requirements so that all parties know the uncertified stove must be removed at the time of home sale. This will reduce violations because buyers and lenders have an interest in ensuring that sellers comply with the law.</p> <p>2) Clarify what is meant by “place of destruction”. Currently, the law is vague and the locations for where the stoves can be destroyed should be more restricted. DEQ should maintain a list of all locations approved by DEQ as a place of destruction. (6), (7)</p> <p><i>Response:</i> DEQ is purposely not specifying places of destruction, because DEQ does not want to limit disposal options for homeowners. For simplicity and to lessen the burden on homeowners, DEQ will accept confirmation of a stove’s destruction from any entity or person willing to render the stove inoperable and certify that fact to DEQ. DEQ does plan to maintain a list of disposal locations as a reference for homeowners, but will make it clear that these are not the only places where a stove can be taken for “destruction”.</p> <p><i>The main safeguard to ensure stove destruction is that state law and state building code prohibits the sale and installation of an uncertified woodstoves. An owner attempting to re-install an uncertified stove would not be able to get a building permit.</i></p>
5. Emissions controls for woodstoves	<p>Develop a device to control emissions on the uncertified wood stoves. (3)</p> <p><i>Response:</i> DEQ has neither the resources nor expertise to develop emissions control devices that can be retrofit on uncertified woodstoves. If a business does develop an emissions control device for uncertified woodstoves and EPA approves it, then DEQ will consider whether these would be allowed on uncertified woodstoves.</p>
6. Burning indoors	<p>There is no way of controlling what people will burn in their own homes in order to save money. (4)</p> <p><i>Response:</i></p>

	<p><i>DEQ is concerned about burning of trash and other prohibited materials indoors, as it can produce toxic emissions that are harmful for everyone. DEQ's main compliance approach will be through education and awareness of the health dangers of burning prohibited materials. However, burning garbage or other prohibited, toxic materials indoors is illegal. As with burning prohibited materials outdoors, DEQ's rules establish penalties for anyone who burns prohibited materials indoors, and DEQ will respond to complaints received.</i></p>
7. Outdoor wood boilers	<ol style="list-style-type: none"> 1) DEQ should allow the testing methods and emission limits developed under the EPA Hydronic Heater Phase 2 Program to certify outdoor wood boilers for sale in Oregon. (5), (6), (7), (8), (9), (10), (11), (12) 2) Revise 340-262-0500 and 340-262-0600 to include OWBs qualified to the Phase 2 level in EPA's voluntary Hydronic Heater Program to be certified and sold in Oregon. (11), (12) 3) DEQ should not abandon supporting the EPA voluntary program and the testing standards (based on a DEQ Fact sheet – March 2008, encouraging consumers to purchase Phase 1 qualified OWB). The Phase 2 program, which is even cleaner, should be adopted by the DEQ, as these standards were specifically developed for these types of devices. Instead, DEQ is copying the state of Washington by not adopting the voluntary program and should not do so because it opens DEQ up to legal challenges. (5), (8), (9), (11) 4) The proposed DEQ test methods are only applicable to indoor woodstoves and cannot and should not be applied to any class of solid fuel burning device. OWBs are specifically exempt from 40 CFR Part 60 Subpart AAA, and EPA will not certify an outdoor wood boiler to this standard, as they do not meet the definition requirements specified in the standard. Use a standard that applies to that specific type of appliance (e.g. test a fireplace with a fireplace standard, etc.). The proposed test methods are inconsistent with EPA testing standards and international testing standards developed for outdoor wood boilers. (5), (8), (9), (10), (11) 5) Six states have developed regulations based on the test standards in EPA's voluntary Hydronic Heater Phase 2 program. These states have adopted these standards, not the indoor wood stove testing requirements in 40 CFR Part 60 Subpart AAA, as DEQ has proposed. (5), (9) 6) There are many similarities between the test method used in the EPA voluntary Hydronic Heater Phase 2 Program and the test method used in 40 CFR Part 60 Subpart AAA. They are both EPA test methods, use four test categories, have similar wood fueling methods, have a g/hr cap, and use the same sampling method. (11) 7) Adopting inappropriate testing standards for outdoor wood boilers will hurt small businesses in Oregon and prevent Oregon consumers from being able to install clean and efficient outdoor wood boilers. (8)

- 8) EPA is working on upcoming New Source Performance Standards (NSPS) regulations that will apply to a wider range of solid fuel burning devices, including such as outdoor wood boilers. After it is revised, the federal regulations can take precedence. (5), (8), (9), (11)
- 9) The proposed rules unreasonably ban outdoor wood boilers that meet EPA's Phase 2 limit of 0.32 lbs/MMBtu heat output but does allow higher emitting EPA certified stoves (1.4 lbs/MMBtu) to be sold. (12)
- 10) The proposed rule amounts to a ban on the sale of outdoor wood boilers and goes against the intent of the legislature under Senate Bill 102 to promote the certification of low emission solid fuel burning devices. (12)

Response:

The intent of Senate Bill 102 was to help protect the human health and air quality of Oregonians from wood smoke. It also allows the EQC to set emission standards for solid fuel burning devices that would be at least as stringent as federal emission standards, but could be stricter as needed to protect Oregonians. DEQ's concern with outdoor wood boilers is that they are currently unregulated and can emit excessive amounts of particulate pollution. Even the cleaner burning outdoor wood boilers still emit up to 3 times more pollution than a certified woodstove. Until this technology advances further, DEQ believes these devices should be required to meet state-of-the-art woodstove emission standards or not be allowed for sale in Oregon.

Several factors contribute to DEQ's recommendation that these devices be required to meet current woodstove emission standards:

- A. DEQ recognizes that boilers meeting the EPA Phase 2 voluntary requirements pollute less and are 90 percent cleaner than unqualified outdoor wood boilers. However, even these boilers pollute too much to be allowed in Oregon. According to the U.S. EPA, a Phase 2 boiler can emit 1.5 to 3 times more particle pollution than a certified woodstove. This is not acceptable emissions performance for a residential wood heating device in Oregon.*
- B. Comparing the lbs/MMBtu heat output of a certified woodstove to an outdoor wood boiler is not equivalent; a certified woodstove typically heats one to two rooms in a home, whereas an outdoor wood boiler heats an entire home. If one were to compare devices that heat entire homes, such as an oil or gas furnace, an outdoor wood boiler is 25-38 times higher emitting.*
- C. Outdoor wood boilers typically have short smokestacks (8-10 ft high) and smoldering fires that create heavy smoke which is released close to the ground. This smoke can linger and expose neighbors to nuisance conditions and health risks.*
- D. Of particular concern is wintertime smoke from outdoor wood boilers*

	<p><i>when cold weather inversions prevent the smoke from dispersing. Many communities experience heavy smoke from residential wood burning that can exceed the federal fine particulate health standards. DEQ has spent the past twenty years investing in various woodstove change-out programs and education campaigns across Oregon to remove older, polluting uncertified woodstoves. Allowing uncertified outdoor wood boilers in Oregon could undermine past efforts to reduce particulate pollution. Once installed, these devices could emit high levels of pollution for several decades. With so many communities near or close to violating public health standards for fine particulate DEQ must regulate these devices to adequately protect public health. DEQ could revisit this issue in the future if new boiler technologies are developed that significantly reduce emissions from these devices to a level that is sufficiently protective of public health.</i></p> <p><i>E. In addition to smoke emissions, DEQ is concerned about the potential to use these devices as a means of illegal waste disposal. Outdoor wood boilers are designed by their manufacturers to burn dry, seasoned wood. However, many of these devices have a very large firebox capacity and loading door, and can be easily used to burn non-wood materials, such as household trash or construction debris, which is both illegal and releases harmful air toxics.</i></p> <p><i>F. DEQ is concerned that the experimental emission test method developed for EPA's voluntary boiler certification program may not accurately reflect the true emissions performance of outdoor wood boiler technology. DEQ has discussed this with officials in other states and state organizations, such as the Northeast States for Coordinated Air Use Management (NESCAUM) and the Western States Air Resources Council (WESTAR), who have similar concerns about the adequacy of the voluntary test method to sufficiently address emissions from these devices. DEQ will need to carefully evaluate any final test method to ensure it enables emission standards that protect public health. Until such time as DEQ approves a boiler test method, DEQ will not accept emissions performance testing results using EPA's voluntary boiler test method. However, in response to these comments, DEQ has revised its proposed rules to allow for DEQ approval of an outdoor wood boilers emissions test methodology that DEQ finds acceptable and equivalent to EPA's NSPS woodstove standard. Any outdoor boiler tested to a DEQ-approved test method and meeting the emission standards stated in the rules can be certified for sale in Oregon.</i></p> <p><i>G. DEQ acknowledges that requiring outdoor wood-fired boilers to meet woodstove emissions standards using the approved EPA woodstove test methods has the practical effect of banning currently available outdoor wood-fired boilers in Oregon. DEQ recommends this action in order to better safeguard public health in Oregon communities.</i></p> <p><i>H. Other states and cities share DEQ's concerns. On the East Coast, where some states have adopted rules for outdoor wood boilers</i></p>
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	<p><i>based on EPA's voluntary Phase 2 program, many cities and towns have gone further and established local ordinances prohibiting the use of these outdoor wood boilers because of the concerns about smoke from these devices. Similar concerns are echoed on the West Coast, where the state of Washington currently does not allow the sale of outdoor wood boilers.</i></p> <p><i>I. DEQ recognizes that these rules will have an adverse effect on those small businesses that sell outdoor wood boilers, of which DEQ has estimated there are approximately four in Oregon. For one of these retailers, outdoor wood boilers are not the only product they carry and they may be able to emphasize sales of other devices that meet standards. Other retailers may be able to sell outdoor wood boilers in neighboring states, such as Idaho and parts of California, where they are allowed.</i></p> <p><i>J. DEQ has been monitoring the progress of EPA's upcoming revisions to the federal New Source Performance Standards for wood heating devices. As mentioned previously, DEQ is concerned about the potential of the outdoor wood boilers to emit particulate pollution, especially in communities at risk of or exceeding the federal health standards for fine particulate. If federal regulations for residential wood-fired boilers are promulgated, DEQ will evaluate whether to adopt these standards for Oregon or develop more protective standards.</i></p>
7. Sell-through provisions	<p>DEQ should establish a sell-through period for in-state business owners selling OWBs already in stock (e.g., six months after effective date of the regulation). This would be similar to sell-through exemptions in other northeast states (Maine, Vermont, New Hampshire, and Pennsylvania) and the sell through provisions that applied after promulgation of the federal woodstove NSPS. This will allow small business owners in Oregon an opportunity to move their existing inventory without being financially burdened. (11)</p> <p><i>Response:</i> <i>The Oregon Hearth Products Association and its members have been aware of the upcoming Heat Smart regulations since 2009 when SB102 was adopted by the legislature. DEQ's rules will not become effective until February 2011, assuming adoption by the EQC. Therefore, in essence there has already been a "sell-through" opportunity for woodstove dealers since fall 2009 through January 2011.</i></p> <p><i>DEQ is not recommending a further sell-through period for solid fuel burning devices newly regulated under this rule. DEQ's recommended approach would help protect air quality and consumers.</i></p> <p><i>DEQ first required the sale of certificated woodstoves in July 1986. In the year prior to that date many woodstove dealers made a special effort to sell out their stock of uncertified stoves before DEQ's rule became effective. This "sell-through" period resulted in hundreds of high pollution woodstoves entering Oregon communities, where many still remain more than twenty</i></p>

	<p><i>years later as sources of air pollution.</i></p> <p><i>DEQ does not want to see this happen again, with installation of the existing stock of uncertified solid fuel burning devices that emit two to seven times more pollution than certified stoves. In addition, any uncertified device sold before the Heat Smart rules become effective will have to be removed in the future upon home sale. DEQ believes it is better for consumers to not perpetuate the sale of noncertified wood heating devices.</i></p>
8. General definitions	<p>1) Clarify the definition of “used” device to allow sale from a private citizen. (6), (7)</p> <p><i>Response:</i> <i>DEQ agrees with the commenter and does not want to exclude the sale of used certified devices from private individuals or any other entity. DEQ has modified the rule to not specify from who the ownership has to be transferred.</i></p>
	<p>2) DEQ should broaden and clarify that outdoor wood boilers are included in the definition of solid fuel burning device, because OWBs are used outside of a private residential structure. The current definition only identifies solid fuel burning devices that produce heat “in a” private residential structure and should include those that produce heat “for a” private residential structure. (11), (12)</p> <p><i>Response:</i> <i>DEQ has modified the definition of solid fuel burning device to include devices that produce heat “for” a residential structure and are not just located “in” a residential structure. This ensures outdoor wood boilers are subject to the requirements.</i></p>
	<p>3) DEQ should define Phase 2 qualified model. (12)</p> <p><i>Response:</i> <i>Because the term “Phase 2” is not being used in the rules, DEQ does not need to define that term.</i></p>
9. Notification of destruction	<p>Clarify which address should be used by the seller removing the stove. (6), (7)</p> <p><i>Response:</i> <i>DEQ agrees clarification is needed in order to determine the contact information of the home seller, especially if the home seller is about to move from his or her current address. DEQ has modified the rule to have the person responsible for removing the stove provide his/her current mailing address.</i></p>
10. Curtailment program	<p>1) Clarify how long an exemption from curtailment should last for a low-income household that has a solid fuel heating device as the sole source of heat. (6), (7)</p> <p><i>Response:</i></p>

	<i>DEQ agrees clarification is needed to indicate how long an exemption from curtailment for a low-income household should last. DEQ has modified the rule to indicate the exemption is good for the current woodheating season.</i>
	<p>2) Clarify who is qualified to sign an affidavit indicating the solid fuel burning device is the sole source of heat in the residence. (6), (7)</p> <p><i>Response:</i> <i>DEQ is not specifying who should sign an affidavit in the rules. DEQ wants to provide flexibility to allow each community to tailor a curtailment program that is appropriate for its needs.</i></p>
11. Certification of solid fuel burning devices	<p>OAR 340-262-0500(1) is too narrow. EPA is in the process of revising the New Source Performance Standard and any future revisions, especially if it includes emission performance standards and certifications for solid fuel burning devices that were not previously certified by EPA, would require the DEQ to re-open the rule to allow for the certification of these devices in Oregon. (11), (12)</p> <p><i>Response to all comments:</i> <i>DEQ agrees that the current language does not allow for any future EPA revisions to the NSPS, without having to go through a separate rulemaking. As DEQ has indicated previously, if and when a new federal NSPS is promulgated for wood burning devices, DEQ will evaluate whether to adopt that standard for Oregon. If so, DEQ will use a formal rulemaking process, with opportunity for public comment.</i></p>

List of People Submitting Comments (by Commenter Number)			
Ref. No.	Name	Affiliation or organization	Received
1.	Judy Bird, Realtor	Judy Bird Real Estate	9/24/2010
2.	Mike Collins	Midgleys Stove and Fireplace Center	9/25/2010
3.	Melody Beaudro, Real estate broker	TR Hunter Real Estate	9/27/2010
4.	Giulia D'Alesio, Director	Quebec Chapter of the Canadian Clean Air Alliance	10/17/2010
5.	Ray Ogden, Owner	Ogden Enterprises	10/18/2010
6.	Linda Ommen, President	Oregon Hearth Patio and Barbecue Association	10/19/2010
7.	Harvey Gail, Executive Director	Oregon Hearth Patio and Barbecue Association	10/20/2010
8.	Steve Carpentier, Owner	Energy Unlimited, LLC	10/20/2010
9.	Keith Anderson, Owner	Anderson Sales	10/27/2010
10.	Danny Amon, Owner	Amon Industrial	10/28/2010
11.	W. Allan Cagnoli, Director of Government Affairs	Hearth Patio and Barbecue Association	10/28/2010
12.	Tom Lindley ²	Perkins Coie (on behalf of Central Boiler, Inc.)	10/29/2010

² Commenters who provided attachments (available upon request)

State of Oregon

Department of Environmental Quality

Memorandum

Presiding Officer's Report

Date: Oct. 25, 2010

To: Environmental Quality Commission

From: Byron Peterson, Air Quality Planning

Subject: Presiding Officer's report for rulemaking hearing
Title of proposal: Heat Smart Program for residential woodstoves and other solid fuel burning devices
Hearing date and time: Oct. 18, 2010, 6 to 6:30 p.m.
Hearing location: DEQ Medford office, Conference Room, 221 Stewart Avenue, Suite 201, Medford, OR 97501

DEQ opened the hearing at 6:10 p.m. and closed it at 6:14 p.m. Attendees were asked to sign registration forms if they wished to present comments. They were also advised that the hearing was being recorded.

One person attended the hearing and provided both written and oral comments.

The following is a summary of the oral comments received at the hearing. DEQ will include these comments, along with the written comments, in the summary of comments and agency responses for this rulemaking.

Ray Ogden, owner of Ogden Enterprises, summarized the written comments that he provided, emphasizing several points. He requested that DEQ use testing standards established by the U.S. Environmental Protection Agency's voluntary certification program for outdoor wood boilers. Mr. Ogden stated the current proposed emission standards for outdoor wood boilers are inappropriate as they are testing standards for indoor wood heating devices. Mr. Ogden also asked why DEQ does not require the same indoor testing standard be applied to fireplaces, pellet stoves, masonry heaters, central wood fired furnaces or other solid fuel burning devices and that it would be equally inappropriate to apply the proposed standard to these devices. He stated that the EPA is also at the point of revising the New Source Performance Standard for woodstoves which will include other devices such as outdoor wood boilers. In his concluding remarks, Mr. Ogden reiterated the DEQ should adopt testing standards allowed in the EPA Phase 2 program for outdoor wood boilers.

The hearing closed at 6:14 p.m.

State of Oregon
Department of Environmental Quality

Memorandum

Presiding Officer's Report

Date: Oct. 20, 2010

To: Environmental Quality Commission

From: Craig C. Filip, Solid Waste Reduction Analyst – Eugene/Presiding Officer

Through: Rachel Sakata, Natural Resource Specialist 3 – Portland

Subject: Presiding Officer's report for rulemaking hearing
Title of proposal: Heat Smart Program for residential woodstoves and other solid fuel burning devices
Hearing date and time: Tuesday, Oct. 19, 2010, 6 p.m.
Hearing location: Eugene State Office Building, 165 E. 7th Ave., Eugene, OR 97401-3049 – Willamette Conference Room

DEQ opened the hearing at 6:28 p.m. and closed at 6:35 p.m.

One person attended the hearing and provided written and oral comments.

Before taking comments, Craig Filip briefly explained the rulemaking proposal and procedures for the hearing. DEQ will include these comments in the summary of comments and agency responses for this rulemaking.

State of Oregon

Department of Environmental Quality

Memorandum

Presiding Officer's Report

Date: Oct. 21, 2010

To: Environmental Quality Commission

From: Gregg Lande, Air Quality Planning

Subject: Presiding Officer's report for rulemaking hearing
Title of proposal: Heat Smart Program for residential woodstoves and other solid fuel burning devices
Hearing date and time: Oct. 20, 2010, 6 to 7 p.m.
Hearing location: DEQ headquarters, EQC-A conference room
811 SW 6th Ave., Portland

DEQ opened the hearing at 6:30 p.m. and closed at 6:45 p.m.

Two people attended the hearing; one person provided oral comments and both submitted written comments.

Before taking comments, Rachel Sakata, air quality planner, briefly explained the rulemaking proposal, procedures for the hearing and the rulemaking process in general. She informed attendees that the proposed rules were scheduled for commission action in February 2011.

The following is a summary of the oral comments received at the hearing. DEQ will include these comments, along with the written comments, in the summary of comments and agency responses for this rulemaking.

Harvey Gail, representing the Oregon Hearth Patio and Barbeque Association, summarized the written comments that he provided, emphasizing several points. He requested that the rule definition for "used device" be clarified to include selling between individual people, and that "place of destruction" be clarified by restricting locations, with the DEQ possibly providing a list of acceptable places. He also commented that the emissions standards for the Outdoor Wood Hydronic Heaters be aligned with EPA's current voluntary standards. Mr. Gail pointed out that the notification form included the home seller's address which might be confusing since the home seller was moving. He also said that the proposed standards could be a hardship for low income people who relied on these heaters as an essential appliance in their homes and

Attachment C

February 16-18, 2011 EQC meeting

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recommended exemptions for low income people, with clarification of the process to include a length of time that the exemption would apply.

Mr. Gail also had a number of observations on the rule in general. He pointed out the value of this rule because it would likely improve fire safety in homes by removing many questionable stoves and improving stove installations. He asked that the commission be aware of EPA's actions on revising the New Source Performance Standards for wood stoves and consider how those would relate to Oregon rules. He emphasized that low income people would be most impacted by these rules and suggested that DEQ keep that in mind as the rules are implemented. He also thought the rules did not address enforcement adequately.

After Mr. Gail completed his comments the other attendee was asked if he wished to present oral comments but he declined and left written comments instead.

The hearing was closed at 6:45 p.m.

State of Oregon
Department of Environmental Quality

Memorandum

Presiding Officer's Report

Date: Oct. 29, 2010

To: Environmental Quality Commission

From: Rachel Sakata, Air Quality Planning

Subject: Presiding Officer's report for rulemaking hearing
Title of proposal: Heat Smart Program for residential woodstoves and other solid
fuel burning devices
Hearing date and time: Oct. 27, 2010, 6 to 7 p.m.
Hearing location: Burns City Hall – Council Chambers
242 South Broadway Ave, Burns, OR 97720

DEQ opened the hearing at 7:10 p.m. and closed it at 7:11 p.m.

Two people attended the hearing; one person provided oral comments but both submitted written comments.

Before taking comments, Rachel Sakata, air quality planner, briefly explained the rulemaking proposal, procedures for the hearing and the rulemaking process in general. She informed attendees that the proposed rules were scheduled for commission action in February 2011.

The following is a summary of the oral comments received at the hearing. DEQ will include these comments, along with the written comments, in the summary of comments and agency responses for this rulemaking.

Harvey Gail, representing the Oregon Hearth Patio and Barbeque Association, summarized his written comments. He requested that the rule definition for “used device” be clarified to include selling between individual people, and that “place of destruction” be clarified by restricting locations, with the DEQ possibly providing a list of acceptable places. He also asked DEQ to align the emissions standards for outdoor wood hydronic heaters with current US EPA voluntary standards. Mr. Gail pointed out that the notification form included the home seller’s address which might be confusing since the home seller was moving. He also said that the proposed standards could be a hardship for low income people who relied on these heaters as an essential appliance in their homes and recommended exemptions for low income people, with clarification of the process to include a length of time that the exemption would apply.

State of Oregon
Department of Environmental Quality

Memorandum

Presiding Officer's Report

Date: Nov. 24, 2010

To: Andy Ginsburg, Division Administrator, Air Quality Program

From: Tom Hack, Air Quality Program, Eastern Region - Pendleton

Subject: Presiding Officer's report for rulemaking hearing
Title of proposal: Heat Smart Program for residential woodstoves and other solid fuel burning devices
Hearing date and time: Oct. 28, 2010 at 6:30 p.m.
Hearing location: Pendleton State Office Building, 1st Floor Conference Room

DEQ opened the hearing at 6:33 p.m. and closed at 6:36 p.m. The hearings officer asked the attendee to sign the registration form if he wished to present comments, and advised that DEQ was recording the hearing.

One person attended provided verbal testimony. No written testimony was provided.

Before taking comments, Rachel Sakata explained the Heat Smart Program and requirements. Then Tom Hack, also from DEQ, explained the procedures for the hearing.

The following is a summary of the verbal comments received at the hearing. DEQ will include this comment in the summary of comments and agency responses for this rulemaking.

Danny Amon identified himself as a Central Boiler dealer who sells outdoor wood fired furnaces. He noted that the New Source Performance Standards were developed for indoor woodstoves and has not been tested on outdoor wood hydronic heaters. He said that there is no basis for testing the outdoor wood hydronic heaters to the indoor woodstove test methods or regulating them based on emission standards that were developed for an entirely different appliance category. He concluded that DEQ should allow the testing methods and emission limits in the U.S. EPA voluntary OWHH Phase 2 program, to certify outdoor wood boilers for sale in Oregon.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Relationship to Federal Requirements

RULE CAPTION

*Heat Smart Program for Residential Woodstoves and Other Solid Fuel
Burning Devices*

*Removal of uncertified stoves upon home sale and certification requirements for new
solid-fuel burning devices*

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?

Yes. The requirements of the proposed rules are different from and in addition to applicable federal requirements. DEQ's proposed rulemaking would implement Senate Bill 102, a measure passed by the 2009 Oregon Legislature to protect Oregonians from unhealthy smoke pollution caused by woodstoves and other solid fuel burning devices. The U.S. Environmental Protection Agency requires residential wood stoves to meet federal emission standards but exempts many other types of home wood-heating devices. This proposed rulemaking subjects a broader range of home and commercial solid fuel burning devices (including outdoor wood-fired boilers and other uncertified wood burning devices) to certification standards. The rulemaking requires the removal of uncertified solid fuel burning devices upon home sale. DEQ's proposal would require home sellers, at the time of home sale, to remove and destroy any uncertified solid fuel burning devices and notify DEQ. The rulemaking also establishes a ban on burning prohibited materials in solid fuel burning devices, trash burners and other devices. Lastly, the rules expand the residential wood burning curtailment program to include curtailment of heating by all means of solid fuel in areas of the state where a wood burning curtailment program is an emission reduction strategy or contingency plan for PM₁₀ or PM_{2.5} nonattainment areas. While the proposed rules help Oregon meet federal ambient air quality standards for particulate matter, they are not specifically required by federal law. The proposed rules for the curtailment program, when required by a PM₁₀ or PM_{2.5} attainment or maintenance plan, however, are a federal requirement because they are being incorporated into the State Clean Air Act Implementation Plan (SIP). These proposed rules for the curtailment program will be submitted to EPA for review and approval as a revision to the Oregon State Implementation Plan under OAR 340-200-0040.

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).

This proposed rulemaking implements Senate Bill 102 (2009), as passed by the Oregon legislature.

In addition, EPA has not updated its woodstove emission standards in over twenty years, and EPA's current exemption process creates significant loopholes in the stringency of their program. The proposed rule addresses this problem by setting emission standards for a broader range of solid fuel burning devices, which includes woodstoves, but also outdoor wood-fired boilers and other uncertified wood burning devices.

In neighborhoods throughout Oregon, wintertime residential wood burning is a significant source of air pollution, including fine particulate and air toxics. At times, heavy smoke from residential wood burning in a community can exceed federal air quality health standards for particulate matter. Particulate matter in woodstove smoke can be easily inhaled and reach the deepest part of our lungs. It is known to cause or contribute to respiratory disease, asthma attacks, heart problems, and premature death. Wood smoke also contains toxic organic compounds known to cause cancer.

In 2006, EPA tightened federal standards for fine particulate when health studies showed this pollution to be more dangerous than previously indicated. The Oregon cities of Klamath Falls and Oakridge are in violation of the new fine particulate standard and Oregonians in more than a dozen communities are at risk from elevated fine particulate levels. These communities often experience heavy smoke from residential wood burning that can exceed the federal fine particulate health standards.

DEQ estimates that approximately 104,000 homes in Oregon use uncertified woodstoves. Uncertified woodstoves emit up to 70% more particulate air pollution, 25% more benzene and 50% more greenhouse gases than newer "certified" woodstoves that meet federal emission standards. Because woodstoves last a long time, there are still tens of thousands of old, high polluting wood burning devices in Oregon that contribute to unhealthy air.

Over the past few years, several communities have passed local ordinances requiring the removal of old, noncertified woodstoves when a home is sold (e.g., Bend, Medford, Ashland, Lakeview, Jackson County, and Klamath County). These proposed rules eliminate the need for such local ordinances, now and in the future, by creating a uniform, statewide requirement for old stove removal at the time of home sale. Requiring old stove removal at the time of home sale would minimize any lost value to the stove owner, benefit public health in the neighborhood by reducing air pollution from that home, and improve home safety by replacing old, potentially unsafe stove installations.

These proposed rules would also make it illegal for trash, plastics, treated wood, and other materials that produce toxic emissions to be burned indoors. This provision makes the rules for burning indoors consistent with the current rules for outdoor burning.

Lastly, the rules expand the residential wood burning curtailment program to include curtailment of heating by all means of solid fuel. It ensures that air quality will not be compromised in those areas that are currently in violation of the PM₁₀ or PM_{2.5} federal air quality standards.

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.

DEQ's rule proposal has additional requirements beyond applicable federal requirements, such as the uncertified stove removal, destruction and notification upon home sale provision. This requirement is mandated by Oregon statute and these proposed rules implement the program. DEQ convened an advisory committee to discuss implementation options, including what notification and reporting

information would be required of the homeowner. Discussions with the advisory committee included whether a picture of the stove when it is destroyed should be submitted, whether only the home owner could dispose of the stove, and whether an inspection would be required after a stove has been removed from a fireplace. DEQ and the advisory committee determined these notification requirements would be too burdensome on the homeowner and opted for a simple notification and removal process, including additional options for the homeowner to comply with the requirements by allowing a homeowner to hire a contractor to remove and destroy the stove and not requiring a fireplace inspection.

DEQ also considered the value of reinstating Oregon's state-run woodstove certification program and establishing separate emission standards for those solid fuel heating devices currently exempt by EPA but covered by Oregon's program. DEQ discussed options with the Washington Department of Ecology, which requires more stringent emission standards for woodstoves and regulates a larger universe of solid fuel burning devices than current federal requirements. Because of resource limitations, DEQ will not reinstate a separate certification program, but will require all solid fuel burning devices sold in Oregon to meet current federal emissions standards for woodstoves. DEQ may adopt stricter emission standards for solid fuel burning devices in the future if needed to protect air quality. Relying on the existing EPA woodstove certification program and emission standards will minimize potential confusion with stove manufacturers by not requiring them to certify their stoves through two different programs. .

DEQ also considered exempting outdoor wood boilers from having to meet Oregon emission standards. The DEQ consulted with the Washington Department of Ecology, the Northeast States for Coordinated Air Use Management (NESCAUM), U.S. EPA, and the Hearth, Patio, Barbecue Association. Although there is an EPA voluntary certification program for the outdoor wood boilers, the DEQ still has concerns about the high volume of emissions from these devices compared to woodstoves. In addition, the state of Washington has raised concerns about the EPA voluntary test method and how it does not represent current conditions in the western states, such as the type of wood fuel used. EPA has also indicated it is looking to regulate these devices in the near future. DEQ considered all of these options and in this proposal has opted to require that outdoor wood boilers meet EPA emission standards for woodstoves. Only outdoor wood fired boiler certified by EPA's woodstove certification program maybe sold in Oregon.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking
STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT

Heat Smart Program for Residential Woodstoves and Other Solid Fuel Burning Devices

Removal of uncertified stoves upon home sale and certification requirements for new solid-fuel burning devices

This form accompanies a Notice of Proposed Rulemaking

Title of Proposed Rulemaking	Heat Smart Program for Residential Woodstoves and Other Solid Fuel Burning Devices, OAR 340-262
Statutory Authority or other Legal Authority	ORS 468 & 468A
Statutes Implemented	ORS 468.140, ORS 468A.035, ORS 468A.100 to 468A.180, ORS 468A.460 to 468A.515
Need for the Rule(s)	This rulemaking would implement the requirements of Senate Bill 102, a measure passed by the 2009 Oregon Legislature to protect Oregonians from uncontrolled wood smoke. Among other things, Senate Bill 102 accelerates the turnover of older uncertified woodstoves. The proposed rules implement the statutory requirement for homeowners to remove and destroy any uncertified woodstove at the time of home sale and to notify DEQ. The proposed rules also subject a broader range of home and commercial heating devices (including outdoor wood-fired boilers and other uncontrolled wood burning devices) to certification requirements. Unless these heating devices meet the certification requirements, they will not be allowed to be sold in Oregon.
Documents Relied Upon for Rulemaking	Senate Bill 102 (2009) http://www.leg.state.or.us/09reg/measpdf/sb0100.dir/sb0102.en.pdf U.S. EPA List of Exempt Appliances: http://www.epa.gov/Compliance/resources/publications/monitoring/caa/woodstoves/exemptwood.pdf The Great American Wood Stove Changeout Program (U.S. EPA): http://www.epa.gov/burnwise/pdfs/wc_are_happening.pdf
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	<p>The following estimates and assumptions are based on DEQ's best available information and any information shared by retailers and manufacturers regarding the universe of uncertified solid fuel burning devices available for sale in Oregon. Some of these assumptions are based on the current housing market, and DEQ notes that the housing trend may improve (thus increasing the number of home sales) that affect this rulemaking.</p> <p>DEQ also relied upon a fiscal advisory committee which met on June 30, 2010 to evaluate the fiscal impacts and stakeholders affected by DEQ's proposed rules. The fiscal advisory committee represented members from the hearth products industry, realtors, homeowners, metal recyclers, home inspectors, chimney sweeps, and local governments. The committee reviewed a draft fiscal impact statement to determine if DEQ reasonably characterized the costs and impacts of the proposed rules.</p>
Overview	<p>Overall, the Oregon Department of Environmental Quality (DEQ) estimates there are approximately 104,000 uncertified woodstoves in Oregon homes. According to the 2008 U.S. Census, there are 1.6 million housing units in Oregon, indicating that uncertified stoves exist in about 6.5% of the homes in Oregon.</p> <p>General Public – DEQ anticipates that those required to remove an uncertified solid fuel heating device</p>

<p>Page 2 of 6</p>	<p>by the proposed rules will experience a cost. At the same time, DEQ anticipates that the general public will experience a positive financial impact because removing the old, uncertified, polluting woodstoves and other heating devices will provide health benefits and decrease health care costs.</p> <p>Small businesses – Woodheating device manufacturers and retail stores will no longer be able to sell certain wood burning devices, such as outdoor wood-fired boilers, thereby changing the mix of wood heating and other heating devices that they are able to sell. DEQ anticipates that this may result in a negative fiscal impact to those manufacturers and retail stores. However, DEQ also anticipates that woodstove installers, chimney sweeps, contractors and some woodstove retail stores may see a positive fiscal impact because they could be contracted to remove uncertified woodstoves and other heating devices and in some cases sell and install a new certified device.</p> <p>Large businesses – DEQ anticipates that some manufacturers and large retail stores will experience a negative fiscal impact because they will no longer be able to sell certain woodstoves, outdoor wood-fired boilers and other heating devices. On the other hand, DEQ anticipates that metal recyclers and landfill operators may see a potential positive fiscal impact because they may receive an increased number of woodstoves and other heating devices for destruction. The metal recyclers could get value for the scrap metal and landfill operators may charge drop-off fees.</p> <p>Several local governments have ordinances requiring the disclosure of any uncertified woodstoves upon home sale. DEQ's state rule pre-empts local woodstove disclosure requirements. These local governments will see a decrease in workload because they will no longer be responsible for collecting and maintaining the disclosure records as all notification will now be required to be submitted to DEQ. The State Building Code department will need to incorporate any relevant sections of DEQ's new rules into the state building code. DEQ will see an increased workload to develop and implement the rules, resulting in a short-term negative fiscal impact, but over the long run these requirements should decrease DEQ's workload as the program is intended to help prevent communities from violating air quality standards, and therefore provide a long-term positive fiscal impact.</p>
<p>Impacts on the General Public</p>	<p>Home sellers will experience a negative economic impact if they choose to have a chimney sweep, woodstove installer, or contractor remove an uncertified stove. DEQ estimates that removal costs can range between \$150 and \$500. There may be some additional home repair costs after stove removal, such as patching holes in the ceiling or fixing the chimney once the stove has been removed. At this time, home sellers may not be able to pass these costs on to buyers because of the current housing market and economic recession. Home sellers may also be forced to delay the closing date in order to ensure the uncertified stove is removed and destroyed. These costs arise directly from Senate Bill 102, and are not due to discretionary rules proposed by DEQ.</p> <p>Additional costs may be incurred if the home seller decides to replace the old stove with a new certified device or other heating system. DEQ estimates that the cost of replacing an uncertified woodstove with a new certified wood or pellet stove can range between \$1000 and \$3000. DEQ also estimates that the installation costs for a new stove, depending on the condition of the hearth and whether new venting pipes are needed can range from \$500 to \$2000, not including the cost of a building permit (about \$50). These costs would be at the seller's discretion, although sellers could come under pressure to replace uncertified stoves given the current housing market.</p> <p>Overall, removing the old stove would benefit public health by reducing air pollution from that home, which could result in savings of \$3,900 in health benefits every year after a stove is removed¹, and improve home safety and reduce the risk of fire by replacing old, potentially unsafe stove installations.</p> <p>DEQ's rules also incorporate another provision of SB102 banning the burning of garbage and other prohibited materials in a woodstove or fireplace. It is possible that some homeowners who currently burn these items will have to spend money to dispose of these materials properly. These costs also occur directly from Senate Bill 102, and are not changed by adoption of these implementing rules.</p>
<p>Impacts to Small Business</p>	<p>Under the proposed rules, manufacturers of solid fuel burning devices not certified by DEQ or EPA would now have to get their device certified in order for the device to be sold in Oregon. DEQ has</p>

¹ U.S. EPA calculation of projected health benefits from changing out an uncertified stove:
http://www.epa.gov/burnwise/pdfs/wc_are_happening.pdf

(50 or fewer employees – ORS183.310(10))	<p>estimated there are approximately 64 manufacturers (both small and large businesses) nationally that produce uncertified solid fuel burning devices, but only about 10 of these manufacturers may sell uncertified solid fuel burning devices in Oregon, and DEQ estimates only a few manufacturers are small businesses (this information was not available to DEQ). This rulemaking will have a negative fiscal impact on solid fuel burning device manufacturers' ability to sell some or all of their devices in Oregon. Unless the stove manufacturers get their devices certified to meet Oregon's requirements under the proposed rules, they will no longer be able to sell these devices in Oregon, resulting in a loss of sales revenue. DEQ was not able to estimate the exact fiscal impacts of the rules on the small manufacturers because it lacked adequate information. For example, sales information from the small manufacturers was not available to the DEQ. In addition, a similar prohibition on the sale of these types of devices is currently in effect in Washington state. The U.S. EPA has also indicated that it may require certification of a wider variety of solid fuel burning devices within the next few years. That being the case, the economic impact of Oregon's rules on these manufacturers may decline over time because the types of uncertified solid fuel burning devices newly regulated under these rules may ultimately be phased out to avoid potential new federal emissions regulation. .</p> <p>Some of the small business retailers, such as small hardware stores and hearth retailers, will be negatively affected because the rules would restrict the sale of uncertified solid fuel burning devices. However, based on an informal DEQ inquiry, these stores sell a small number uncertified devices (about 3 devices a year, per store, in an informal DEQ survey). The estimated sales loss from these devices would be roughly \$200 for a small uncertified device, such as a "cabin stove" to \$10,000 for an uncertified outdoor wood boiler. While the loss of these sales will have a negative impact, overall the proposed rules are not expected to have a significant detrimental significant effect on their businesses. The majority of small retail businesses, such as hearth products retailers, sell certified devices and other devices such as natural gas stoves that would not be subject to DEQ's regulations, and these devices make up the bulk of their retail sales.²</p> <p>Wood stove and HVAC installers, contractors, and chimney sweeps could see a potential positive fiscal impact to their businesses because homeowners may utilize their services to help remove and destroy the uncertified stoves. Since the statute went into effect on August 1, 2010, chimney sweeps have been receiving an average of one to two calls per week for consultations to help determine whether a stove is uncertified and needs to be removed from the home. For each house consultation, chimney sweeps can charge up to \$100 per home consultation to determine whether a stove is uncertified and needs to be removed from the home. Contractors and chimney sweeps can charge an additional \$150 - \$500 for the removal and destruction of any uncertified device, which they are conducting at a rate of about one per month. However, the impact of their services will depend on the housing market and turnover of older homes with these uncertified solid fuel burning devices. In some instances, the home seller may decide to replace the old device, which could provide revenue to hearth products and installers between \$1500 - \$3000 for the costs of a replacement device or installation.</p> <p>Real estate agents and home inspectors will need to become familiar with the rules to keep themselves informed and educate their clients during a real estate transaction or home inspection. Realtors may choose to pay for the cost of a consultation (\$100) or it may require an extra day or two for the realtor to work with their client to comply with the regulations. In addition realtors and home inspectors may need to invest some time in training to educate themselves of the requirements, but this training could be part of their continuing education credits otherwise needed to maintain their licenses. DEQ lacks the information to estimate the cost to the realtors for their time spent to become familiar with and help their clients comply with the regulations.</p>		
Cost of Compliance on Small Business (50 or fewer employees – ORS183.310(10))	<table> <tr> <td data-bbox="397 1623 722 1711">a) Estimated number of small businesses subject to the proposed rule</td><td data-bbox="787 1623 1511 1864"> <ul style="list-style-type: none"> - Up to 64 potential woodstove manufacturers nationally, but it is currently estimated there may be 10 manufacturers that sell uncertified devices in Oregon that will now be subject to regulations, some of which may be large businesses. - Over 1,000 real estate agencies - At least 45 woodstove dealers and retailers - At least 25 chimney sweeps - Up to 3,500 independent contractors </td></tr> </table>	a) Estimated number of small businesses subject to the proposed rule	<ul style="list-style-type: none"> - Up to 64 potential woodstove manufacturers nationally, but it is currently estimated there may be 10 manufacturers that sell uncertified devices in Oregon that will now be subject to regulations, some of which may be large businesses. - Over 1,000 real estate agencies - At least 45 woodstove dealers and retailers - At least 25 chimney sweeps - Up to 3,500 independent contractors
a) Estimated number of small businesses subject to the proposed rule	<ul style="list-style-type: none"> - Up to 64 potential woodstove manufacturers nationally, but it is currently estimated there may be 10 manufacturers that sell uncertified devices in Oregon that will now be subject to regulations, some of which may be large businesses. - Over 1,000 real estate agencies - At least 45 woodstove dealers and retailers - At least 25 chimney sweeps - Up to 3,500 independent contractors 		

² Based on conversations with Oregon Hearth Patio and Barbecue Association, and local retailers.

<p>Page 4 of 6</p>	<p>b) Types of businesses and industries with small businesses subject to the proposed rule</p>	<p>Solid fuel burning device manufacturers Hearth products dealers Woodstove and HVAC installers Chimney sweeps Home inspectors Realtor agencies</p>
	<p>c) Projected reporting, recordkeeping and other administrative activities required by small businesses for compliance with the proposed rule, including costs of professional services</p>	<p>If the homeowner contracts out the work to have the uncertified device removed and destroyed from the home, hearth product dealers, installers, chimney sweeps, and contractors may have to complete the DEQ notification forms on behalf of the homeowner.</p>
	<p>d) The equipment, supplies, labor, and increased administration required by small businesses for compliance with the proposed rule</p>	<p>Manufacturers of exempt stoves will have to get their stoves certified by an accredited lab in order to sell any solid fuel burning devices in Oregon. Cost of getting a stove model certified is about \$10,000 - \$15,000 to the manufacturer. In some cases, manufacturers may need to redesign a solid fuel burning device in order to ensure it can meet the Oregon certification requirements, which could cost up to \$100,000. Manufacturers may be able to avoid these costs by substituting other models that meet certification standards for sale in Oregon.</p>
	<p>e) A description of the manner in which DEQ involved small businesses in the development of this rulemaking</p>	<p>DEQ convened an advisory committee that included members from the hearth products association, realtors, home inspectors, and chimney sweeps to provide input on the rules. DEQ also contacted local retailers who sell EPA-exempt stoves (stoves subject to regulation under the rules) to determine the impact on their sales if they were no longer able to sell these devices.</p>
<p>Impacts on Large Business (all businesses that are not "small businesses" under ORS183.310(10))</p>	<p>Larger manufacturers of uncertified solid fuel burning devices would now have to get their devices certified in order for the devices to be sold in Oregon. DEQ has estimated there are approximately 64 manufacturers nationally (both small and large businesses) that produce uncertified solid fuel burning devices, but only about 10 of these manufacturers appear to sell uncertified solid fuel burning devices in Oregon (as allowed under current Oregon law). The proposed rulemaking will affect the manufacturers' ability to sell these devices in Oregon, including manufacturers of outdoor wood boilers. For example, one manufacturer/distributor, Vogelzang, sells approximately 200-300 uncertified (EPA exempt) stoves in Oregon a year and these stoves retail between \$200 - \$600 per device. Such devices will no longer be approved for sale in Oregon. Vogelzang's EPA certified models will continue to be allowed for sale in Oregon.</p> <p>A similar rule prohibiting the sale of uncertified (EPA exempt) solid fuel burning devices is currently in effect in Washington state. In addition, the U.S. EPA has indicated it may require certification of a wider variety of solid fuel burning devices within the next few years. Some manufacturers of uncertified solid fuel burning devices appear to be slowly discontinuing certain uncertified solid fuel burning devices in anticipation of EPA's new standards. The economic impact of Oregon's rules on the uncertified solid fuel burning device manufacturers may decline over time because many uncertified solid fuel burning devices are targeted for federal certification requirements and may ultimately be phased out. In addition, Washington's current emissions requirements may already have reduced sales of outdoor wood boilers in the Northwest; sales information on these devices sold in Oregon was not available, and DEQ lacks the information necessary to make accurate estimates of the loss in retail sales to these manufacturers.</p> <p>Currently, there are large retail stores, such as Home Depot and Lowe's that sell uncertified solid fuel burning devices. DEQ estimates there could be approximately 100 uncertified solid fuel burning devices sold in Oregon each year. While the cumulative sales of uncertified wood heating devices contribute to air pollution problems, only a small number of devices are sold in any one retail store. For example, the general hardware stores that sell these devices typically only sell a few uncertified solid fuel burning devices a year (an average of five devices per store each year based on an informal survey by DEQ).³ While the loss of sales from these devices will have some negative fiscal impact, some retail stores are</p>	

³ DEQ contacted large retailers, but sales information was not always made available to DEQ.

	<p>already in the process of phasing out the sale of the devices and do not plan to sell these devices in the future.</p> <p>Metal recyclers and landfills may see an increased number of uncertified solid fuel burning devices being dropped off for destruction. The metal recyclers could see an economic benefit as they may get value for the scrap metal (current market rate is \$120/ton) and landfill operators may charge drop-off fees (~\$0.05/lb). A potential negative impact could be through the increased paperwork, as the metal recyclers and landfills will also need to provide a receipt to the homeowner, so the homeowner can provide proof of destruction to DEQ. However, these costs occur directly from Senate Bill 102 and are not changed by adoption of these rules.</p> <p>Banks could experience a negative fiscal impact associated with this rule. Banks could be impacted because they are carrying a large volume of foreclosed homes. Senate Bill 102 makes the home seller responsible for removing any uncertified woodstoves, and the potential costs (\$150 - \$500) banks incur from hiring a contractor to ensure removal and destruction of the device, is not affected by the adoption of these rules.</p>
Impacts on Local Government	<p>The cities of Bend, Lakeview, and Medford, Klamath County, Deschutes County, as well as Jackson County have existing ordinances requiring the removal and disclosure of uncertified stoves upon home sale. DEQ's rule will replace the local disclosure requirement with a statewide requirement. DEQ's rules will decrease the workload for these local governments, because they will no longer have to process notification forms for woodstove removal, although they could experience a temporary increase in workload to answer questions about the new law. Local building codes departments may see an increased number of permit applications because of homeowners who are removing old, uncertified devices may choose to replace them with new, certified stoves. Local building departments charge for installation permits, (\$50-\$150) so this will be a normal cost of business to anyone wishing to install a woodstove. This could provide revenue to the various localities and the increased use of permits and inspections will result in safer stove installations. These revenue estimates are difficult for DEQ to quantify because of the variability in home sales and it is dependent upon whether the homeowner also decides to replace the old, uncertified stove.</p>
Impacts on State Agencies other than DEQ	<p>These rules will have an impact on the State Building Codes Department. DEQ's rules will change the definition of woodstove to "solid fuel burning device", thus expanding the universe of devices that must be subject to certification requirements. The State Building Codes Department updates their rules on a biannual basis. Any revisions needed to the building codes rules as a result of the proposed rules will be incorporated as part of the biannual update to the building codes rules. This fiscal impact can be absorbed with existing staff already dedicated to updating the rules.</p>
Impacts on DEQ	<p>Senate Bill 102 has a minor fiscal impact on DEQ to develop this rulemaking and an electronic database, conduct outreach, and implement the program. These costs can be absorbed by DEQ with existing resources, specifically staff already working on keeping or bringing areas into compliance with the federal health standards. It will cost 0.4 FTE (over 9 months) to develop rules and implement the program. After the initial start up and implementation, it will cost 0.1 FTE to maintain the program, provide additional assistance, pursue any potential enforcement actions, and maintain the database and filing of notification forms. In the long term, however, the rule changes will reduce DEQ's costs because they will help clean up the air in communities throughout Oregon that have elevated particulate matter levels. If any of these communities violates the federal health standard, DEQ has to spend at least three to five years utilizing staff resources to develop a plan to bring the area back into compliance. This program helps act as a preventative measure to address wood smoke and maintain healthy air.</p>
Assumptions	<p>DEQ contacted a number of retailers (e.g., Home Depot, Lowe's, Harbor Freight, Sears and small hardware stores in Oregon) to determine how many of the EPA-exempt devices were sold in Oregon each year. The sales figures are based on estimates provided by the retailers, although not all retailers were willing to share sales information.</p> <p>Other assumptions were based on conversations with representatives from the hearth products industry, chimney sweeps, contractors, and metal recyclers.</p>
Housing Costs	<p>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.</p> <p>It would only affect an existing single family dwelling with an uncertified stove on the premises.</p>

Administrative Rule Advisory Committee	DEQ convened an Advisory Committee on April 8, 2010 to discuss the development of the rules. DEQ convened the Advisory Committee again, on June 30, 2010 to provide input on the fiscal impact statement.
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Rachel Sakata
Prepared by

RACHEL SAKATA
Printed name

9/9/10
Date

JR Roy
Approved by DEQ Budget Office

JAMES ROYS
Printed name

9/14/10
Date

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Land Use Evaluation Statement

Rulemaking Proposal
for
Heat Smart program for residential woodstoves and other solid fuel burning devices

Removal of uncertified stoves upon home sale and certification requirements for new solid-fuel burning devices

1. Explain the purpose of the proposed rules.

DEQ's proposed rulemaking would implement Senate Bill 102, a measure passed by the 2009 Oregon Legislature to protect Oregonians from unhealthy wood smoke by accelerating the turnover of older uncertified woodstoves. The U.S. Environmental Protection Agency requires residential wood stoves to meet federal emission standards but exempts many other types of home wood-heating devices. This proposed rulemaking subjects a broader range of home wood-heating devices (including outdoor wood-fired boilers and other uncontrolled wood burning devices) to the federal emission standards for woodstoves. The rulemaking also requires the removal of an uncertified woodstove upon home sale. DEQ's proposal would require home sellers, at the time of home sale, to remove and destroy any uncertified woodstove and notify DEQ.

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:

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

Yes___ No___ (if no, explain):

c. If no, apply the following criteria to the proposed rules.

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs and rules that relate to statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or
2. Reasonably expected to have significant effects on
 - a. resources, objectives or areas identified in the statewide planning goals, or
 - b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2 above, two guidelines should be applied to assess land use significance:

- The land use responsibilities of a program/rule/action that involved more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

This proposed rulemaking does not directly affect existing rules or programs that are land use programs. These proposed rules establish a program to implement the uncertified woodstove removal requirement, in which a home owner must remove and destroy any uncertified stove at time of home sale. These requirements would not affect any existing or future land uses because noncompliance with the requirements would not prevent the sale of a home.

However, the proposed rules do further the objectives of Goal 6 by protecting air quality. For example, these rules require the removal of old, polluting uncertified stoves that emit particulate matter pollution. Particulate matter is a federally-regulated air quality pollutant and in certain areas of the state that are in violation of the federal health standards, the DEQ must develop rules to bring an area back into compliance.

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.

DEQ has reviewed the proposed rules and determined that no procedures in addition to those already in the rules are needed to ensure compliance with statewide land use goals. The rules are not expected to significantly affect or conflict with existing or future land uses under local comprehensive plans or regulations. There are some local jurisdictions that have ordinances relating to woodstoves but these have been adopted in local health or other public safety codes and not in zoning regulations. DEQ has concluded the only statewide goal affected by the rules is Goal 6 and that the rules directly advance the objectives of the Goal. No further procedures are needed to ensure goal compliance or establish compatibility with local plans.



DEQ Heat Smart Advisory Committee Members April 2010

Committee Member	Organization
Corey Bailey	Schnitzer Steel Industries - Regional Environmental Manager
Delbert Bell	Klamath County Health Department - Environmental Health Manager
Steve Blaha	Esbey Construction Co. – Home inspector
Adam Bogle	Coldwell Banker – Medford-Ashland realtor
Robert Daggett	Coldwell Banker – Klamath Falls realtor
Shaun Jillions	Oregon Association of Realtors - Legislative Policy Director
Geoff McPherson	Homeowner - Ashland
Tim Nissen	Home Fire Stove - Hearth products dealer
Kent Swanson	Mt. Tabor Chimney Company – Chimney sweep