

DEPARTMENT OF AGRICULTURE

DIVISION 77

FIELD BURNING RULES

603-077-0101

Introduction

(1) This Division applies to the open field burning, propane flaming, and stack and pile burning of all perennial and annual grass seed and cereal grain crops, and associated residue within the [Willamette Valley counties listed in ORS 468A.560 as amended by SB 528](#). It also includes rules pertaining only to fees for open field burning of perennial and annual grass seed crops in the counties outside the [Willamette Valley counties listed in ORS 468A.560 as amended by SB 528](#). The open burning of all other agricultural waste material (referred to as "fourth priority agricultural burning") is governed by OAR Chapter 340, Division 264, Rules for Open Burning.

(2) Organization of rules:

(a) OAR 603-077-0103 is the policy statement of the Oregon Department of Agriculture setting forth the goals of this Division;

(b) OAR 603-077-0105 contains definitions of terms which have specialized meanings within the context of this Division;

(c) OAR 603-077-0110 lists general provisions and requirements pertaining to all open field burning, propane flaming, and stack and pile burning with particular emphasis on the duties and responsibilities of the grower registrant;

(d) OAR 603-077-0112 lists procedures and requirements for registration of acreage, issuance of permits, collection of fees, and keeping of records, with particular emphasis on the duties and responsibilities of the local permit issuing agencies;

(e) OAR 603-077-0113 establishes acreage limits and methods of determining acreage allocations;

(f) OAR 603-077-0115 establishes criteria for authorization of open field burning, propane flaming, and stack and pile burning pursuant to the administration of a daily smoke management control program;

(g) OAR 603-077-0125 contains order of priority for open field burning according to crop type;

(h) OAR 603-077-0131 establishes special provisions pertaining to field burning by public agencies for official purposes, such as "training fires";

(i) OAR 603-077-0133 establishes special provisions pertaining to "preparatory burning";

(j) OAR 603-077-0135 establishes special provisions pertaining to open field burning for experimental purposes;

(k) OAR 603-077-0137 establishes special provisions pertaining to burning fees outside the [Willamette Valley counties listed in ORS 468A.560 as amended by SB 528](#);

(k) OAR 603-077-0140 establishes special provisions and procedures pertaining to emergency cessation of burning;

(l) OAR 603-077-0145 establishes provisions pertaining to propane flaming;

(m) OAR 603-077-0155 establishes provisions pertaining to "stack burning."

(n) OAR 603-077-0165 thru OAR 603-077-0195 establish provisions pertaining to enforcement procedures and civil penalties.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: ODA 2-1998, f. & cert. ef. 3-3-98

603-077-0103

Policy

In the interest of public health and welfare, it is the declared public policy of the State of Oregon to reduce the practice of open field burning while developing and providing alternative methods of field sanitation and alternative methods of utilizing and marketing grass seed and cereal grain straw residues and to control, reduce, and prevent air pollution from open field burning, propane flaming, and stack burning by smoke management. In developing and carrying out a smoke management control program it is the policy of the Department:

(1) To provide for a maximum level of burning with a minimum level of smoke impact on the public, recognizing:

- (a) The importance of flexibility and judgment in the daily decision-making process, within established and necessary limits;
 - (b) The need for operational efficiency within and between each organizational level;
 - (c) The need for effective compliance with all regulations and restrictions.
- (2) To study, develop and encourage the use of reasonable and economically feasible alternatives to the practice of open field burning.
- (3) To increase the degree of public safety by preventing unwanted wild fires and smoke from open field burning, propane flaming, and stack burning near highways and freeways within the State of Oregon. The Department hereby adopts by reference, as rules of the Department OAR 837-110-0005 through 837-110-0155, the rules of the State Fire Marshal filed with the Secretary of State on February 1, 2003. These rules shall apply to that area west of the Cascade Range and south to the Douglas/Lane County lines.

Stat. Auth.: ORS 561.190
Stats. Implemented: ORS 468A.585
Hist.: ODA 2-1998, f. & cert. ef. 3-3-98

603-077-0105

Definitions

As used in this Division:

- (1) "Actively Extinguish" means the direct application of water or other fire retardant to an open field fire.
- (2) "Approved Alternative Method(s)" means any method approved by the Department to be a satisfactory alternative field sanitation method to open field burning.
- (3) "Approved Alternative Facilities" means any land, structure, building, installation, excavation, machinery, equipment, or device approved by the Department for use in conjunction with an approved alternative method.
- (4) "Permit or "Burn Permit" or "Burning Permit" means a permit issued by the Department pursuant to ORS 468A.575.
- (5) "Candidate Fields" means all grass seed or cereal grain fields being considered for open field burning or propane flaming.

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

(7) "Critical Nonburn Area" means the area of a grass seed or cereal grain field within the counties listed in ORS 468A.560 as amended by SB 528 that is underneath a power transmission line of 230kV rating or greater which includes 75 feet on either side of the center line of the power transmission line.

~~(78)~~ "Crop" means cultivated agricultural plants such as grain.

~~(89)~~ "Cumulative Hours of Smoke Intrusion in the Eugene-Springfield Area" means the average of the totals of cumulative hours of smoke intrusion recorded for the Eugene site and the Springfield site. Provided the Department determines that field burning was a significant contributor to the smoke intrusion:

(a) The Department shall record one hour of intrusion for each hour the nephelometer hourly reading exceeds a background level by 1.8×10^{-4} b-scat units or more but less than the applicable value in subsection (b) or (c) of this section;

(b) Between June 16 and September 14 of each year, two hours of smoke intrusion shall be recorded for each hour the nephelometer hourly reading exceeds a background level by 5.0×10^{-4} b-scat units;

(c) Between September 15 and June 15 of each year, two hours of intrusion shall be recorded for each hour the nephelometer hourly reading exceeds a background level by 4.0×10^{-4} b-scat units;

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

~~(910)~~ "Department" means the Oregon Department of Agriculture.

~~(1011)~~ "Director" means the Director of the Department or delegated employee representative.

~~(1112)~~ "District Allocation" means the total amount of acreage sub-allocated annually to the fire district, based on the district's pro rata share of the maximum annual acreage limitation, representing the maximum amount for which burning permits may be issued within the district, subject to daily authorization. District allocation is defined by the following identity:

District Allocation = (maximum annual acreage limit) x ((total acreage registered in district) / (total acreage registered in the valley))

(~~12~~13) "Drying Day" means a 24-hour period during which the relative humidity reached a minimum less than 50 percent and no rainfall was recorded at the nearest reliable measuring site.

(~~13~~14) "Effective Mixing Height" means either the actual height of plume rise as determined by ODA field staff or the calculated or estimated mixing height as determined by the Department.

(~~14~~15) "Field-by-Field Burning" means burning on a limited or restricted basis in which the amount, rate, and area authorized for burning is closely controlled and monitored. Included under this definition are "training fires" and experimental open field burning.

(~~15~~16) "Field Reference Code" means a unique four-part code which identifies a particular registered field for mapping purposes. The first part of the code shall indicate the grower registration (form) number, the second part the line number of the field as listed on the registration form, the third part the crop type, and the fourth part the size (acreage) of the field (e.g., a 35 acre perennial (bluegrass) field registered on Line 2 of registration form number 1953 would be 1953-2-P-BL-35).

(~~16~~17) "Fire District" or "District" or "Fire Protection District" means a fire permit issuing agency.

(~~17~~18) "Fire Permit" means a permit issued by a local fire permit issuing agency pursuant to ORS 477.515, 476.380, or 478.960.

(~~18~~19) "Fires-Out Time" means the time announced by the Department when all flames and major smoke sources associated with open field burning should be out and prohibition conditions are scheduled to be imposed.

(~~19~~20) "Fire Safety Buffer Zone" shall have the same meaning as defined in the State Fire Marshal rules.

(~~20~~21) "Fluffing" means an approved mechanical method of stirring or tedding crop residues for enhanced aeration and drying of the full fuel load, thereby improving the field's combustion characteristics.

(~~21~~22) "Grower" means a person that cultivates perennial or annual grass seed or cereal grain.

(~~22~~23) "Grower Allocation" means the amount of acreage sub-allocated annually to the grower registrant, based on the grower registrant's pro rata share of the maximum annual acreage limitation, representing the maximum amount for which burning permits may be issued, subject to daily authorization. Grower allocation is defined by the following identity:

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

(~~23~~24) "Grower Registrant" means any person who registers acreage with the Department for purposes of open field burning, propane flaming, or receives a permit to stack or pile burn.

(~~24~~25) "Marginal Conditions" means atmospheric conditions such that smoke and particulate matter escape into the upper atmosphere with some difficulty but not such that limited additional smoke and particulate matter would constitute a danger to the public health and safety.

(~~25~~26) "Marginal Day" means a day on which marginal conditions exist.

(~~26~~27) "Nephelometer" means an instrument for measuring ambient smoke concentrations.

(~~27~~28) "Northerly Winds" means winds coming from directions between 270° to 90° in the north part of the compass, averaged through the effective mixing height.

(~~28~~29) "Open Field Burning" means burning of any perennial or annual grass seed or cereal grain crop, or associated residue, in such manner that combustion air and combustion products are not effectively controlled.

(~~29~~30) "Open Field Burning Permit" means a permit issued by the Department pursuant to ORS 468A.575.

(~~30~~31) "Permit Agent" means the person under contract or otherwise authorized by the department to administer registration of acreage, issue burn permits, collect fees, and keep records for open field burning, propane flaming, or stack burning within their permit jurisdictions pursuant to ORS 468A.550 et seq.

(~~31~~32) "Permit Issuing Agency" means the county court or board of county commissioners, or fire chief or a rural fire protection district or other person authorized to issue fire permits pursuant to ORS 477.515, 476.380, or 478.960.

(~~32~~33) "Person" means, but is not limited to, individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, states and their agencies, and the Federal Government and its agencies.

(~~33~~34) "Preparatory Burning" means controlled burning of portions of selected problem fields for the specific purpose of reducing the fire hazard potential or other conditions

which would otherwise inhibit rapid ignition burning when the field is subsequently open burned.

(~~3435~~) "Priority Acreage" means acreage located within a priority area.

(~~3536~~) "Priority Areas" means the following areas of the ~~Willamette Valley~~ counties listed in ORS 468A.560 as amended by SB 528:

(a) Areas in or within three miles of the city limits of incorporated cities having populations of 10,000 or greater;

(b) Areas within one mile of airports servicing regularly scheduled airline flights;

(c) Areas in Lane County south of the line formed by U.S. Highway 126 and Oregon Highway 126;

(d) Areas in or within three miles of the city limits of the City of Lebanon;

(e) Areas on the west and east side of and within 1/4 mile of these highways: 99, 99E, and 99W. Areas on the south and north side of and within 1/4 mile of U.S. Highway 20 between Albany and Lebanon, Oregon Highway 34 between Lebanon and Corvallis, Oregon Highway 228 from its junction south of Brownsville to its rail crossing at the community of Tulsa.

(~~3637~~) "Problem Field" means a field that cannot be burned under the usual conditions because of a fire hazard or nearby school, hospital, airport, or other sensitive area.

(~~3738~~) "Prohibition Conditions" means conditions under which open field burning is not allowed except for individual burns specifically authorized by the Department pursuant to OAR 603-077-0115(2).

(~~3839~~) "Propane Flaming" means a mobile flamer device which meets the following design specifications and utilizes an auxiliary fuel such that combustion is nearly complete and emissions are significantly reduced:

(a) Flamer nozzles shall not be more than 15 inches apart;

(b) A heat deflecting hood is required and shall extend a minimum of three feet beyond the last row of nozzles.

(~~3940~~) "Propane Flaming Permit" means a permit issued by the Department pursuant to ORS 468A.575 and consisting of a validation number and specifying the conditions and acreage specifically registered and allocated for propane flaming.

(4041) "Quota" means an amount of acreage established by the Department for each fire district for use in authorizing daily burning limits in a manner to provide, as reasonably as practicable, an equitable opportunity for burning in each area.

(4142) "Rapid Ignition Techniques" means a method of burning in which all sides of the field are ignited as rapidly as practicable to maximize plume rise. When using this method, little or no preparatory backfire burning shall be done.

(4243) "Released Allocation" means that part of a grower's allocation, by registration form, that is unused and voluntarily released to the Department for first come-first serve dispersal to other grower registrants.

(4344) "Residue" means straw, stubble, screenings and associated crop material generated in the production of grass seed and cereal grain crops.

(4445) "Responsible Person" means each person who is in ownership, control, or custody of the real property on which open field burning occurs, including any tenant thereof, or who is in ownership, control or custody of the material which is burned, or the grower registrant. Each person who causes or allows open field burning, propane flaming, or stack or pile burning to be maintained shall also be considered a responsible person.

(4546) "Screenings" means organic waste materials resulting from the seed cleaning process of grass seed and cereal grain.

(4647) "Small-Seeded Seed Crops Requiring Flame Sanitation" means small-seeded grass, legume, and vegetable crops, or other types approved by the Department, which are planted in early autumn, are grown specifically for seed production, and which require flame sanitation for proper cultivation. For purposes of this Division, clover and sugar beets are specifically included. Cereal grains, hairy vetch, or field peas are specifically not included.

(4748) "Smoke Management" means a system for the daily or hourly control of open field burning, propane flaming, or stack or pile burning through authorization of the times, locations, amounts and other restrictions on burning, so as to provide for suitable atmospheric dispersion of smoke particulate and to minimize impact on the public.

(4849) "Southerly Winds" means winds coming from directions between 90° to 270° in the south part of the compass, averaged through the effective mixing height.

(4950) "Stack Burning" means the open burning of bound, baled, collected, gathered, accumulated, piled or stacked straw residue from perennial or annual grass seed or cereal grain crops.

(5051) "Stack Burning Permit" means a permit issued by the Department pursuant to ORS 468A.575 that identifies the responsible person, date of permit issuance, and specifies the acreage and location authorized for stack burning.

(5152) "Test Fires" means individual field burns specifically authorized by the Department for the purpose of determining or monitoring atmospheric dispersion conditions.

(5253) "Training Fires" means individual field burns set by or for a public agency for the official purpose of training personnel in fire-fighting techniques.

(5354) "Unusually High Evaporative Weather Conditions" means a combination of meteorological conditions following periods of rain that result in sufficiently high rates of evaporation, as determined by the Department, where fuel (residue) moisture content would be expected to approach about 12 percent or less.

(5455) "Validation Number" is used interchangeably with "Burn Permit" and means:

(a) For open field burning a unique five-part number issued by the Department or its delegate identifying a specific field and acreage allowed to be open field burned and the date and time the permit was issued (e.g., a validation number issued August 26 at 2:30 p.m. for a 70-acre burn for a field registered on Line 2 of registration form number 1953 would be 1953-2-0826-1430-070);

(b) For propane flaming and stack burning a unique five part alphanumeric, issued by the Department or its delegate, identifying a specific field and acreage allowed to be propane flamed or stack burned, the date and time the permit was issued, and the burn type (e.g., a validation number issued on July 15 for a 100 acre field to be propane flamed registered on Line 4 of registration form 9999 would be 9999-4-0715-P-100).

(5556) "Ventilation Index (VI)" means a calculated value used as a criterion of atmospheric ventilation capabilities. The Ventilation Index as used in this Division is defined by the following identity:

$$VI = (\text{Effective mixing height (feet)}) / 1,000 \times (\text{Average wind speed through the effective mixing height (knots)})$$

(5657) "Wildfire" means an uncontrollable fire that is not intentionally started, caused by man, machine, nature, or an other cause, usually but not necessarily traveling and spreading rapidly.

~~(57) "Willamette Valley" means the areas of Benton, Clackamas, Lane, Linn, Marion, Multnomah, Polk, Washington, and Yamhill Counties lying between the crest of the Coast Range and the crest of the Cascade Mountains, and includes the following:~~

~~(a) "South Valley," the areas of jurisdiction of all fire permit issuing agents or agencies in the Willamette Valley portions of the counties of Benton, Lane, or Linn;~~

~~(b) "North Valley," the areas of jurisdiction of all other fire permit issuing agents or agencies in the Willamette Valley including portions of Linn and Benton counties.~~

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: ODA 2-1998, f. & cert. ef. 3-3-98

603-077-0110

General Requirements

(1) No person shall cause or allow open field burning or propane flaming on any acreage unless said acreage has first been registered and mapped pursuant to OAR 603-077-0112(1), the registration fee has been paid, and the registration (permit application) has been approved by the Department.

(2) No person shall cause or allow open field burning, propane flaming, or stack burning without first obtaining and being able to readily demonstrate a valid burning permit and fire permit from the appropriate permit issuing agent pursuant to OAR 603-077-0112(2). On the specific day of and prior to open field burning, propane flaming, or stack burning of any grass seed or cereal grain crop or associated residue the grower registrant shall obtain, in person or by telephone, a valid burning permit and fire permit from the appropriate permit issuing agent pursuant to OAR 603-077-0112.

(3) The Department may prohibit any person from registering acreage for open field burning or propane flaming and may deny burn permits for open field burning, propane flaming, and stack burning until all delinquent registration fees, late fees, burn permit fees, and adjudicated penalties from previous seasons are paid. The Department may also institute appropriate legal action to collect the delinquent fees.

(4) No person shall open field burn cereal grain acreage unless that person first issues to the Department a signed statement, and then acts to ensure, that said acreage will be planted in the following growing season to a small-seeded seed crop requiring flame sanitation for proper cultivation, as defined in OAR 603-077-0105(46).

(5) No person shall cause or allow open field burning, propane flaming, or stack burning which is contrary to the Department's announced burning schedule specifying the times, locations and amounts of burning permitted, or to any other provision announced or set forth by the Department or this Division.

(6) Each responsible person open field burning or propane flaming shall have an operating radio receiver and shall directly monitor the Department's burn schedule announcements at all times while open field burning or propane flaming.

(7) Each responsible person open field burning or propane flaming shall actively extinguish all flames and major smoke sources when prohibition conditions are imposed by the Department or when instructed to do so by an agent or employee of the Department.

(8) No person shall cause or allow open field burning or stack burning within 1/4 mile of either side of any Interstate freeway within the Willamette Valley counties listed in ORS 468A.560 as amended by SB 528 or within 1/8 mile of either side of the designated roadways listed in OAR 837-110-0080(2)(c). In addition, no person shall cause or allow open field burning in any of the remaining area within a fire safety buffer zone unless a noncombustible ground surface has been provided between the field to be burned and the nearest edge of the roadway right-of-way as required by OAR 837-110-0080.

(9) No person shall cause or allow open field burning, propane flaming or stack burning inside Critical Nonburn Areas as defined in OAR 603-077-0105(7). In addition each responsible person open field burning, propane flaming, or stack burning adjacent to a Critical Nonburn Area shall take appropriate precautions to ensure that the Critical Nonburn Area remains unburned. These precautions may include, but are not limited to, plowing or disking the Critical Nonburn Area prior to burning adjacent to the Critical Nonburn Area, or providing a noncombustible barrier of sufficient width adjacent to the Critical Nonburn Area.

(910) Each responsible person open field burning, propane flaming, or stack burning within a priority area or fire safety buffer zone around a designated city, airport or highway shall refrain from burning and promptly extinguish any burning if it is likely that the resulting smoke would noticeably affect the designated city, airport or highway.

(1011) Each responsible person open field burning shall make every reasonable effort to expedite and promote efficient burning and prevent excessive emissions of smoke by:

(a) Meeting all of the State Fire Marshal requirements specified in OAR 837-110-0040 through 837-110-0080;

(b) Ensuring field residues are evenly distributed, dry, and in good burning condition;

(c) Employing rapid ignition techniques on all acreage where there are no imminent fire hazards or public safety concerns.

(~~11~~12) In the event of a “wildfire” and a grower is unable to comply with all of the requirements of this Division because of a breakdown of equipment, an accident caused by human error or negligence, or any other cause, the grower shall:

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

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

(A) Notification must be by phone, fax, email, or in person.

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

(~~12~~13) Open field burning, propane flaming, or stack burning in compliance with this Division does not exempt any person from any civil or criminal liability for consequences or damages resulting from such burning, nor does it exempt any person from complying with any other applicable law, ordinance, regulation, rule, permit, order or decree of the Department, Commission or any other government entity having jurisdiction.

~~(13) Any revisions to the maximum acreage to be burned, allocation or permit issuing procedures, or any other substantive changes to this Division affecting open field burning, propane flaming, or stack or pile burning for any year shall be made prior to June 1 of that year. In making such changes, the Department shall consult with Oregon State University.~~

(14) 1st, 2nd, 3rd, and 4th priority open field burning shall be regulated in a manner consistent with the requirements of the Oregon Visibility Protection Plan for Class I Areas (Section 5.2 of the State of Oregon Clean Air Act Implementation Plan adopted under OAR 340-200-0040).

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: ODA 2-1998, f. & cert. ef. 3-3-98

603-077-0112

Registration, Permits, Fees, Records

In administering a field burning smoke management program, the Department may contract with counties or fire districts or any other responsible individual to administer registration of acreage, issuance of permits, collection of fees, and keeping of records for open field burning, propane flaming, or stack burning within their permit jurisdictions.

The Department shall pay said authority for these services in accordance with the payment schedule provided for in ORS 468A.615. Three-quarters of said payment shall be made prior to July 1 of each year and the remainder shall be paid within ten days after completion of the end of season reconciliation:

(1) Registration of acreage:

(a) On or before April 1 of each year, each grower intending to open burn or propane flame under this Division shall register the total acreage to be open burned or propane flamed. Said acreage shall be registered with the Department or its authorized permit agent on the registration forms provided. Candidate fields for open field burning or propane flaming shall be listed on the registration form and shall also be delineated on specially provided registration map materials and identified using a unique field reference code. Each candidate field listing shall state if the field is located in a priority area, contains Critical Nonburn Areas. -and/or is a problem field. Registration, listing of fields, and mapping shall be completed according to the established procedures of the Department. At the time of registration, a non-refundable registration fee of \$2-4 shall be paid for each acre registered for open field burning and \$1-2 shall be paid for each acre registered for propane flaming. A complete registration (permit application) shall consist of a fully executed registration form, map and fee. Acreage registered by April 1 may be issued a burn permit if:

(A) Allocation is available; and

(B) The initial registration fee account has a sufficient balance.

(b) Registration of open field burning and propane flaming acreage after April 1 of each year shall require the prior approval of the Department and an additional \$1-2 per acre late registration fee. The late registration fee shall not be charged if the late registration is not due to the fault of the registrant or one under the registrant's control;

(c) Copies of all registration forms and fees shall be forwarded to the Department promptly by the permit agent. Registration map materials shall be made available to the Department at all times for inspection and reproduction;

(d) The Department shall act on any registration application within 60 days of receipt of a completed application. The Department may deny or revoke any registration application which is incomplete, false or contrary to state law or this Division;

(e) The grower registrant shall insure the information presented on the registration form and map is complete and accurate.

(2) Permits:

(a) Permits for open field burning, propane flaming, or stack burning shall be issued by the Department, or its authorized permit agent, to the grower registrant in accordance with the established procedures of the Department, and the times, locations, amounts and other restrictions set forth by the Department or this Division;

(b) A fire permit from the local fire permit issuing agency is also required for all open field burning pursuant to ORS 477.515, 476.380, 478.960;

(c) A valid open field burning permit shall consist of:

(A) An open field burning permit issued by the Department which specifies the permit conditions in effect at all times while burning and which identifies the acreage specifically registered and annually allocated for burning;

(B) A validation number issued by the designated permit agent on the day of the burn identifying the specific acreage allowed for burning and the date and time the permit was issued.

(d) A valid propane flaming permit shall consist of:

(A) A propane flaming registration form issued by the Department which specifies the permit conditions in effect at all times while flaming and which identifies the acreage specifically registered and annually allocated for propane flaming;

(B) A validation number issued by the designated permit agent identifying the specific acreage allowed for propane flaming and the date and time the permit was issued.

(e) A valid stack burning permit shall consist of the name of the responsible person and date the permit was issued, and shall specify the acreage and location authorized;

(f) Each responsible person open field burning, propane flaming, or stack burning shall pay a per acre burn fee within ten days of the date the permit was issued. The fee shall be:

(A) ~~\$8-16~~ per acre sanitized by open field burning;

(B) ~~\$2-4~~ per acre sanitized by propane flaming;

(C) \$10 per acre burned in stacks.

(D) For grass seed and cereal grain residue from previous seasons, broken bales, or fields where a portion of straw was removed using usual or standard baling methods, the acreage actually burned shall be estimated and the same per acre fee as imposed

in paragraph (C) of this subsection shall be charged. The estimated acreage shall be rounded to the nearest whole acre.

(g) Burning permits shall at all times be limited by and subject to the burn schedule and other requirements or conditions announced or set forth by the Department;

(h) No person shall issue burning permits for open field burning, propane flaming, or stack burning of:

(A) More acreage than the amount sub-allocated annually to the District by the Department pursuant to OAR 603-077-0113(2);

(B)(i) Priority or fire safety buffer zone acreage located on the upwind side of any city, airport, Interstate freeway or highway within the same priority area or buffer zone.

(ii) It is the responsibility of each designated permit agent to establish and implement a system for distributing open field burning, propane flaming, or stack burning permits to individual grower registrants when burning is authorized, provided that such system is fair, orderly and consistent with state law, this Division and any other provisions set forth by the Department.

(3) Fees:

(a) Permit agents shall collect, properly document, and promptly forward all required registration fees, late registration fees, and burn fees to the Department;

(b) All fees shall be deposited in the State Treasury to the credit of the Department of Agriculture Service Fund.

(4) Records:

(a) Permit agents shall at all times keep proper and accurate records of all transactions pertaining to registrations, permits, fees, allocations, and other matters specified by the Department. Such records shall be kept by the permit agent for a period of at least five years and made available for inspection by the appropriate authorities;

(b) Permit agents shall submit to the Department on specially provided forms weekly reports of all acreage burned in their permit jurisdictions. These reports shall cover the weekly period of Monday through Sunday, and shall be mailed and post-marked no later than the first working day of the following week.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: ODA 2-1998, f. & cert. ef. 3-3-98

603-077-0113

Acreage Limitations, Allocations

(1) Limitation of Acreage:

(a) Except for acreage and residue open field burned pursuant to OAR 603-077-0135, 603-077-0140, 603-077-0145, and 603-077-0155, the maximum acreage to be open field burned annually in the Willamette Valley counties listed in ORS 468A.560 as amended by SB 528 under this Division shall not exceed 4020,000 acres for the year 2009. For the year 2010 and thereafter no acres shall be allowed to be open field burned in the counties listed in ORS 468A.560 as amended by SB 528.

(b) Notwithstanding the annual limitation, up to 2515,000 acres may be open field burned annually in the counties listed in ORS 468A.560 as amended by SB 528 and shall be considered outside the limitation:-

(A) First consideration for these acres shall be given to creeping red fescue, chewings fescue and highland bentgrass as grass species identified by the Director of Agriculture. Sufficient acreage up to 25,000 acres shall be assigned this category annually after consultation with Oregon State University and the respective commodity commissions. Final consideration for the remainder of acreage, if any, shall be given as well as to terrain defined by Revised Universal Soil Loss Equation (RUSLE) and percent slope criteria as steep terrain identified by the Director of Agriculture, such that a pool of acreage is available approximately two times the remainder acreage.

(B) Steep terrain and species identified by the Director of Agriculture may not be open burned under the provisions of this subsection in Benton and Lane Counties and in Linn County, except for portions of northeast Linn County that are east of Stayton-Scio Road and north of Highway 226, and portions of northeast Linn County that are east of Richardson Gap Road and north of Fish Hatchery Drive.

(c) Other limitations on acreage allowed to be open field burned are specified in OAR 603-077-0115(7), 603-077-0131(2), 603-077-0133(1) and 603-077-0135(1);

(d) The maximum acreage to be propane flamed annually in the Willamette Valley counties listed in ORS 468A.560 as amended by SB 528 under this Division shall not exceed 37,500500 acres for the years 2009, 2010, 2011 and 2012. For the year 2013 and thereafter no propane flaming acreage will be allowed to be burned in the counties listed in ORS 468A.560 as amended by SB 528;

(e) Other limitations on acreage allowed to be propane flamed are specified in OAR 603-077-0145.

(f) The maximum acreage to be stack or pile burned annually in the counties listed in ORS 468A.560 as amended by SB 528 under this Division shall not exceed 1000 acres for the years 2009, 2010, 2011 and 2012. For the year 2013 and thereafter no stack or pile burning acreage will be allowed to be burned in the counties listed in ORS 468A.560 as amended by SB 528;

(2) Allocation of Acreage:

(a) In the event that total registration as of April 1 is less than or equal to the maximum acreage allowed to be open field burned or propane flamed annually, pursuant to subsection (1)(a), (b) and (d) of this rule, the Department shall sub-allocate to each grower registrant and each district (subject to daily burn authorization) 100 percent of their respective registered acreage;

(b) In the event that total registration as of April 1 exceeds the maximum acreage allowed to be open field burned or propane flamed annually, pursuant to subsection (1)(a), (b) and (d) of this rule, the Department may sub-allocate to growers on a pro rata share basis not more than 100 percent of the maximum acreage limit, referred to as "grower allocation." In addition, the Department shall sub-allocate to each respective fire district, its pro rata share of the maximum acreage limit based on acreage registered within the district, referred to as "district allocation";

(c) To ensure optimum permit utilization, the Department may adjust fire district allocations;

(d) Transfer of allocations for farm management purposes may be made within and between fire districts and between grower registrants on a one-in/one-out basis under the supervision of the Department. The Department may assist grower registrants by administering a reserve of released allocation for first come-first served utilization.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: ODA 2-1998, f. & cert. ef. 3-3-98

603-077-0115

Daily Burning Authorization Criteria

As part of the Smoke Management Program provided for in ORS 468A.590, the Department shall set forth the types and extent of open field burning, propane flaming, and stack burning to be allowed each day according to the provisions established in this section and this Division:

(1) During the active burning season and on an as needed basis, the Department shall announce the burning schedule over the burning radio network operated specifically for this purpose or by other appropriate means. The schedule shall specify the times, locations, amounts and other restrictions in effect for open field burning, propane flaming, and stack burning. The Department shall notify Oregon Emergency Management of the burning schedule for dissemination to appropriate Willamette Valley agencies.

(2) Prohibition conditions:

(a) Prohibition conditions shall be in effect at all times unless specifically determined and announced otherwise by the Department;

(b) Under prohibition conditions, no permits shall be issued and no open field burning shall be conducted in any area except for individual burns specifically authorized by the Department on a limited extent basis. Such limited burning may include field-by-field burning, preparatory burning, or burning of test fires, except that:

(A) No open field burning shall be allowed:

(i) In any area subject to a ventilation index of less than 10.0;

(ii) In any area upwind, or in the immediate vicinity, of any area in which, based upon real-time monitoring, a violation of federal or state air quality standards is projected to occur.

(B) Only test-fire burning may be allowed:

(i) In any area subject to a ventilation index of between 10.0 and 15.0, inclusive, except for experimental burning specifically authorized by the Department pursuant to OAR 603-077-0135;

(ii) When relative humidity at the nearest reliable measuring station exceeds 50 percent under forecast northerly winds or 65 percent under forecast southerly winds.

(3) Marginal conditions:

(a) The Department shall announce that marginal conditions are in effect and open field burning is allowed when, in its best judgment and within the established limits of this Division, the prevailing atmospheric dispersion and burning conditions are suitable for satisfactory smoke dispersal with minimal impact on the public, provided that the minimum conditions set forth in paragraphs (2)(b)(A) and (B) of this rule are satisfied;

(b) Under marginal conditions, permits may be issued and open field burning may be conducted in accordance with the times, locations, amounts, and other restrictions set forth by the Department and this Division.

(4) Hours of burning:

(a) Burning hours shall be limited to those specifically authorized by the Department each day and may be changed at any time when necessary to attain and maintain air quality;

(b) Burning hours may be reduced by the fire chief or his deputy, and burning may be prohibited by the State Fire Marshal, when necessary to prevent danger to life or property from fire, pursuant to ORS 478.960.

(5) Locations of burning:

(a) Locations of burning shall at all times be limited to those areas specifically authorized by the Department; except that

(b) No priority or fire safety buffer zone acreage shall be burned upwind of any city, airport, Interstate freeway or highway within the same priority area or buffer zone;

(c) No south Valley priority acreage shall be burned upwind of the Eugene-Springfield non-attainment area.

(6) Amounts of burning:

(a) To provide for an efficient and equitable distribution of burning, daily authorizations of acreages shall be issued by the Department in terms of single or multiple fire district quotas. The Department shall establish quotas for each fire district and may adjust the quotas of any district when conditions in its judgment warrant such action;

(b) Unless otherwise specifically announced by the Department, a one quota limit shall be considered in effect for each district authorized for burning;

(c) The Department may issue more restrictive limitations on the amount, density or frequency of burning in any area or on the basis of crop type, when conditions in its judgment warrant such action.

(7) Limitations on burning based on air quality:

(a) The Department shall establish the minimum allowable effective mixing height required for burning based upon cumulative hours of smoke intrusion in the Eugene-Springfield area as follows;

(b) Except as provided in paragraph (c) of this subsection, burning shall only be permitted whenever the following conditions are met:

(A) West Eugene area; defined as south of Eugene Airport, north of highway 126, for open burning of perennial grass crops;

Mixing Height is equal to or greater than 4500'

Transport wind direction = 50 -120 degrees

Transport wind speed minimum = 12 mph

Surface wind speed = calm to 7 mph

(B) Creswell area for open burning of perennial grass crops:

Mixing Height is equal to or greater than 4000'

Transport wind direction = 30 – 90 degrees

Transport wind speed minimum = 12 mph

Surface wind speed = calm to 7 mph

(c) Notwithstanding the effective mixing height restrictions of paragraph (b) of this subsection, the Department may authorize burning of up to 1,000 acres total per day for the [Willamette Valley counties listed in ORS 468A.560 as amended by SB 528](#), consistent with smoke management considerations and this Division.

(8) Limitations on burning based on rainfall:

(a) Open field burning and propane flaming shall be prohibited in any area for one drying day (up to a maximum of four consecutive drying days) for each 0.10 inch increment of rainfall received per day at the nearest reliable measuring station;

(b) The Department may waive the restrictions of subsection (a) of this section when dry fields are available as a result of special field preparation or condition, irregular rainfall patterns, or unusually high evaporative weather condition.

(9) Other discretionary provisions and restrictions:

(a) The Department may require special field preparations before burning, such as, but not limited to, mechanical fluffing of residues, when conditions in its judgment warrant such action;

(b) The Department may designate specified periods following permit issuance within which time active field ignition must be initiated and/or all flames must be actively extinguished before said permit is automatically rendered invalid;

(c) The Department may designate additional areas as priority areas when conditions in its judgment warrant such action.

Stat. Auth.: ORS 561.190
Stats. Implemented: ORS 468A.585
Hist.: ODA 2-1998, f. & cert. ef. 3-3-98

603-077-0125

Priority for Open Field Burning According to Crop Type

In making determination of whether or not to prohibit or limit any open field burning pursuant to this division the Department shall give first priority to the burning of perennial grass seed crops used for grass seed production, second priority for annual grass seed crop used for grass seed production, third priority to grain crop burning and fourth priority to all other burning.

Stat. Auth.: ORS 561.190
Stats. Implemented: ORS 468A.585
Hist.: ODA 2-1998, f. & cert. ef. 3-3-98

603-077-0131

Burning by Public Agencies (Training Fires)

Open field burning on grass seed or cereal grain acreage by or for any public agency for official purposes, including the training of fire-fighting personnel must be pre-scheduled with the Department and is subject to the following conditions:

- (1) Such burning shall be consistent with smoke management considerations whenever practical.
- (2) Such burning must be deemed necessary by the official local authority having jurisdiction and must be conducted in a manner consistent with its purpose.
- (3) Such burning must be limited to the minimum number of acres but in no case exceed 50 acres per fire or occasion.
- (4) Such burning must be limited to the minimum number of fires but in no case exceed 2 fires per fire district annually.
- (5) The responsible person shall comply with the provisions of OAR 603-077-0110 through 603-077-0113.

Stat. Auth.: ORS 561.190
Stats. Implemented: ORS 468A.585

Hist.: ODA 2-1998, f. & cert. ef. 3-3-98

603-077-0133

Preparatory Burning

The Department encourages the preparatory burning of portions of selected problem fields to reduce or eliminate potential fire hazards and safety problems and to expedite the subsequent burning of the field. Such burning shall be consistent with smoke management considerations and subject to the following conditions:

- (1) Each responsible person shall limit the acres burned to the minimum necessary to eliminate potential fire hazards or safety problems but in no case exceed five acres for each burn unless specifically authorized by the Department.
- (2) Each responsible person conducting preparatory burning shall employ backfiring burning techniques.
- (3) Each responsible person conducting preparatory burning shall comply with the provisions of OAR 603-077-0110 through 603-077-0113 and OAR 837-110-010 through 837-110-090.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: ODA 2-1998, f. & cert. ef. 3-3-98

603-077-0135

Experimental Burning

The Department may allow open field burning for demonstration or experimental purposes pursuant to the provisions of ORS 468A.620, consistent with smoke management considerations and subject to the following conditions:

- (1) Acreage experimentally open field burned, propane flamed, or stack or pile burned shall not exceed 1,000 acres annually.
- (2) Acreage experimentally burned shall not apply to the district allocation or to the maximum annual acreage limit specified in OAR 603-077-0113(1)(a) or (d).
- (3) Such burning is exempt from the provisions of OAR 603-077-0115 but must comply with the provisions of OAR 603-077-0110 and 603-077-0112, except that the Department may elect to waive all or part of the per acre open field burning or propane flaming fee.

Stat. Auth.: ORS 561.190
Stats. Implemented: ORS 468A.585
Hist.: ODA 2-1998, f. & cert. ef. 3-3-98

603-077-0137

Burning Fees Outside Willamette Valley

Notwithstanding OAR 603-077-0135(3), each person sanitizing perennial or annual grass seed crops by open field burning, in counties outside the Willamette Valley counties listed in ORS 468A.560 as amended by SB 528, shall pay the Department \$48.00 for each acre burned.

Stat. Auth.: ORS 561.190
Stats. Implemented: ORS 468A.585
Hist.: ODA 2-1998, f. & cert. ef. 3-3-98

603-077-0140

Emergency Burning Cessation

Pursuant to ORS 468A.610 and upon finding of ~~extreme~~ danger to public health or safety, the Commission or the Department may order temporary emergency cessation of all open field burning in any area of the Willamette Valley counties listed in ORS 468A.560 as amended by SB 528.

Stat. Auth.: ORS 561.190
Stats. Implemented: ORS 468A.585
Hist.: ODA 2-1998, f. & cert. ef. 3-3-98

603-077-0145

Propane Flaming

(1) The use of propane flammers, mobile field sanitizing devices, and other field sanitation methods specifically approved by the Department are subject to the following conditions:

(a) The field shall first be prepared as follows:

(A) Either the field must have previously been open burned and the appropriate fees paid; or

(B) The field stubble must be flail-chopped, mowed, or otherwise cut close to the ground and the loose straw removed so the remaining stubble will not sustain an open fire.

(b) Propane flaming operations shall comply with the following criteria:

(A) Unless otherwise specifically restricted by the Department propane flaming may be conducted only between the hours of 9 a.m. and sunset between June 1 and August 31 of each year and 9 a.m. to 1/2 hour before sunset between September 1 and October 14 of each year;

(B) Propane flamers shall be operated in overlapping strips, crosswise to the prevailing wind, beginning along the downwind edge of the field;

(C) No person shall cause or allow propane flaming which results in sustained open fire. Should sustained open fire create excessive smoke all flame and smoke sources shall be immediately and actively extinguished;

(D) No person shall cause or allow any propane flaming which results in visibility impairment on any Interstate highways or roadways specified in OAR 837-110-0080(1) and (2). Should visibility impairment occur, all flame and smoke sources shall be immediately and actively extinguished;

(E) The acreage must be registered and permits obtained pursuant to OAR 603-077-0112;

(F) No person shall cause or allow propane flaming when either the relative humidity at the nearest reliable measuring station exceeds 65 percent or the surface winds exceed 15 miles per hour;

(G) All regrowth over eight inches in height shall be mowed or cut close to the ground and removed.

(c) All propane flaming operations shall be conducted in accordance with the State Fire Marshal's safety requirements specified in OAR 837-110-0100 through 837-110-0160;

(d) No person shall cause or allow to be initiated or maintained any propane flaming or other mobile fire sanitation methods not certified by the Department on any day or at any time if the Department has determined and notified the State Fire Marshal that propane flaming is prohibited because of adverse meteorological or air quality conditions.

(2) The Department may issue restrictive limitations on the amount, density or frequency of propane flaming or other mobile fire sanitation methods in any area when

meteorological conditions are unsuitable for adequate smoke dispersion, or deterioration of ambient air quality occurs.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: ODA 2-1998, f. & cert. ef. 3-3-98

603-077-0155

Stack Burning

The open burning of piled or stacked residue from perennial or annual grass seed or cereal grain crops used for seed production is allowed subject to the following conditions:

(1) No person shall cause or allow to be initiated or maintained any stack burning on any day or at any time if the Department has notified Oregon Emergency Management that such burning is prohibited because of meteorological or air quality conditions.

(2) No person shall cause or allow stack burning of any grass seed or cereal grain residue unless said residue is dry and free of all other combustible and non-combustible material.

(3) Each responsible person shall make every reasonable effort to promote efficient burning, minimize smoke emissions, and extinguish any stack burning which is in violation of any rule of the Commission.

(4) No stack burning shall be conducted within any State Fire Marshal buffer zone "non-combustible ground surface" area (e.g., within 1/4 mile of Interstate I-5, or 1/8 mile of any designated roadway), as specified in OAR 837-110-0080.

(5) The acreage must be permitted pursuant to OAR 603-077-0112.

(6) Unless otherwise specifically agreed by the parties, after the straw is removed from the fields of the grower, the responsibility for the further disposition of the straw, including burning or disposal, and payment of the appropriate fees, shall be upon the person who bales, removes, controls, or is in possession of the straw.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: ODA 2-1998, f. & cert. ef. 3-3-98

603-077-0165

Definitions for Enforcement Procedures and Civil Penalties

Unless otherwise required by context, as used in OAR 603-077-0170 – 603-077-0195:

- (1) "Class One Equivalent" or "Equivalent," which is used only for the purposes of determining the value of the "P" factor in the civil penalty formula, means two Class Two violations, one Class Two and two Class Three violations, or three Class Three violations.
- (2) "Compliance" means meeting the requirements of the Department's statutes, rules, permits or orders.
- (3) "Director" means the Director of the Department or the Director's authorized deputies or officers.
- (4) "Department" means the Department of Agriculture.
- (5) "Documented Violation" means any violation which the Department or other government agency records after observation, investigation or data collection.
- (6) "Flagrant" means any documented violation where the Respondent had actual knowledge of the law and had consciously set out to commit the violation.
- (7) "Formal Enforcement Action" means an action signed by the Director or authorized representatives or deputies which is issued to a Respondent for a documented violation. Formal enforcement actions may require the Respondent to take action within a specified time frame, and/or state the consequences for the violation or continued noncompliance.
- (8) "Intentional" means conduct by a person with a conscious objective to cause the result of the conduct.
- (9) "Magnitude of the Violation" means the extent and effects of a violator's deviation from the Department's statutes, rules, standards, permits or orders. In determining magnitude the Department shall consider all available applicable information, including such factors as: duration, intensity, and the extent of the effects of the violation. Deviations shall be categorized as major, moderate or minor as set forth in OAR 603-077-0180.
- (10) "Negligence" or "Negligent" means failure to take reasonable care to avoid a foreseeable risk of committing an act or omission constituting a violation.

(11) "Order" means:

(a) Any action satisfying the definition given in ORS Chapter 183; or

(b) Any other action so designated in ORS Chapters 468 or 468A.

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

(13) "Prior Significant Action" means any violation established either with or without admission of a violation by payment of a civil penalty, or by a final order of the Department.

(14) "Reckless" or "Recklessly" means conduct by a person who is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of care a reasonable person would observe in that situation.

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

(16) "Risk of Harm" means the individual or cumulative possibility of harm to public health or the environment caused by a violation or violations. Risk of harm shall be categorized as major, moderate or minor.

(17) "Systematic" means any documented violation which occurs on a regular basis.

(18) "Violation" means a transgression of any statute, rule, order, license, permit, or any part thereof and includes both acts and omissions. Violations shall be categorized as Class One (or I), Class Two (or II) or Class Three (or III), with Class One designating the most serious class of violation.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: ODA 2-1998, f. & cert. ef. 3-3-98

603-077-0170

Consolidation of Proceedings

Notwithstanding that each and every violation is a separate and distinct offense, and in cases of continuing violations, that each day's continuance is a separate and distinct

violation, proceedings for the assessment of multiple civil penalties for multiple violations may be consolidated into a single proceeding.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: ODA 2-1998, f. & cert. ef. 3-3-98

603-077-0175

Enforcement Actions

(1) Notice of Noncompliance (NON):

(a) Informs a person of a violation, and the consequences of the violation or continued noncompliance. The notice may state the actions required to resolve the violation and may specify a time by which compliance is to be achieved and that the need for formal enforcement action will be evaluated;

(b) Shall be issued by the Director or authorized representative;

(c) May be issued for all classes of documented violations;

(d) Shall be a contested case order for purposes of judicial review.

(2) Notice of Civil Penalty Assessment (CPA):

(a) Is issued pursuant to ORS 468A.992, and OAR 603-077-0177 and 603-077-0180;

(b) Shall be issued by the Director or authorized representative.

(3) Order:

(a) Is issued pursuant to ORS Chapters 183, 468, 468A;

(b) May be in the form of a Department Order, Stipulation and Final Order (SFO) or a Mutual Agreement and Order:

(A) Department Orders shall be issued by the Director or authorized representative;

(B) All other Orders:

(i) May be negotiated;

(ii) Shall be signed by the Director or authorized representative and the authorized representative of each other party.

(c) May be issued for any Class of violation.

(4) The enforcement actions described in sections (1) through (3) of this rule in no way limit the Department from seeking legal or equitable remedies as provided by ORS Chapters 468, 468A, and 561.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: ODA 2-1998, f. & cert. ef. 3-3-98

603-077-0177

Civil Penalty Schedule Matrices

In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation relating to field burning pertaining to statutes, rules, permits or orders by service of a written notice of assessment of civil penalty upon the Respondent. The amount of any civil penalty shall be determined through the use of the following matrix in conjunction with the formula contained in OAR 603-077-0180:

(1) Civil penalty matrix

Magnitude of Violation	Major	Moderate	Minor
Class I	\$6,000	\$3,000	\$1,000
Class II	\$2,000	\$1,000	\$ 500
Class III	\$ 500	\$ 250	\$ 100

(a) No civil penalty issued by the Director pursuant to this matrix shall be less than fifty dollars (\$50) or more than ten thousand dollars (\$10,000) for each day of each violation. This matrix shall apply to the following:

(A) Any violation related to field burning statutes, rules, permits or orders.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: ODA 2-1998, f. & cert. ef. 3-3-98

603-077-0180

Civil Penalty Determination Procedure

(1) When determining the amount of civil penalty to be assessed for any violation, the Director or authorized representative shall apply the following procedures:

(a) Determine the class and the magnitude of each violation:

(A) The class of a violation is determined by consulting OAR 603-077-0195;

(B) The magnitude of the violation shall be moderate unless:

(i) If the Department finds that the violation had a significant adverse impact on the environment, or posed a significant threat to public health, a determination of major magnitude shall be made. In making a determination of major magnitude, the Department shall consider all available applicable information including such factors as: The degree of deviation from applicable statutes, rules, standards, permits or orders, and the extent of the effects of the violation. In making this finding, the Department may consider any single factor to be conclusive for the purpose of making a major magnitude determination;

(ii) If the Department finds that the violation had no potential for or actual adverse impact on the environment, nor posed any threat to public health, or other environmental receptors, a determination of minor magnitude shall be made. In making a determination of minor magnitude, the Department shall consider all available applicable information including such factors as: The degree of deviation from the applicable statutes, rules, standards, permits or orders, and the extent of the effects of the violation. In making this finding, the Department may consider any single factor to be conclusive for the purpose of making a minor magnitude determination.

(b) Choose the appropriate base penalty (BP) established by the matrices of OAR 603-077-0177 after determining the class and magnitude of each violation;

(c) Starting with the base penalty, determine the amount of penalty through application of the formula: $BP + ((.1 \times BP) (P + H + O + R + C)) + EB$ where:

(A) "P" is whether the Respondent has any prior significant actions relating to statutes, rules, orders and permits pertaining to environmental quality or pollution control. The values for "P" and the finding which supports each are as follows:

(i) 0 if no prior significant actions or there is insufficient information on which to base a finding;

(ii) 1 if the prior significant action is one Class Two or two Class Threes;

(iii) 2 if the prior significant action(s) is one Class One or equivalent;

- (iv) 3 if the prior significant actions are two Class One or equivalents;
 - (v) 4 if the prior significant actions are three Class Ones or equivalents;
 - (vi) 5 if the prior significant actions are four Class Ones or equivalents;
 - (vii) 6 if the prior significant actions are five Class Ones or equivalents;
 - (viii) 7 if the prior significant actions are six Class Ones or equivalents;
 - (ix) 8 if the prior significant actions are seven Class Ones or equivalents;
 - (x) 9 if the prior significant actions are eight Class Ones or equivalents;
 - (xi) 10 if the prior significant actions are nine Class Ones or equivalents;
 - (xii) In determining the appropriate value for prior significant actions as listed above, the Department shall reduce the appropriate factor by:
 - (I) A value of 2 if the date of issuance of all the prior significant actions are greater than three years old but less than five years old;
 - (II) A value of 4 if the date of issuance of all the prior significant actions are greater than five years old;
 - (III) In making the above reductions, no finding shall be less than zero.
 - (xiii) Any prior significant action which is greater than ten years old shall not be included in the above determination.
- (B) "H" is past history of the Respondent in taking all feasible steps or procedures necessary or appropriate to correct any violation cited in any prior significant actions. In no case shall the combination of the "P" factor and the "H" factor be a value less than zero. In such cases where the sum of the "P" and "H" values is a negative numeral the finding and determination for the combination of these two factors shall be zero. The values for "H" and the finding which supports each are as follows:
- (i) -2 if Respondent took all feasible steps to correct each violation contained in any prior significant action;
 - (ii) 0 if there is no prior history or if there is insufficient information on which to base a finding.
- (C) "O" is whether the violation was repeated or continuous. The values for "O" and the finding which supports each are as follows:

- (i) 0 if the violation existed for one day or less and did not recur on the same day;
- (ii) 2 if the violation existed for more than one day or if the violation recurred on the same day.
- (iii) 2 if Respondent took some but not all feasible steps to correct each violation contained in any prior significant action.
- (iv) 4 if Respondent took no steps to correct each violation contained in any prior significant action.

(D) "R" is whether the violation resulted from an unavoidable accident, or a negligent, intentional or flagrant act of the Respondent. The values for "R" and the finding which supports each are as follows:

- (i) 0 if an unavoidable accident, or if there is insufficient information to make a finding;
- (ii) 2 if negligent;
- (iii) 6 if intentional; or
- (iv) 10 if flagrant.

(E) "C" is the Respondent's cooperativeness and efforts to correct the violation. The values for "C" and the finding which supports each are as follows:

- (i) -2 if Respondent was cooperative and took reasonable efforts to correct the violation or minimize the effects of the violation;
- (ii) 0 if there is insufficient information to make a finding, or if the violation or the effects of the violation could not be corrected;
- (iii) 2 if Respondent was uncooperative and did not take reasonable efforts to correct the violation or minimize the effects of the violation.

(F) "EB" is the approximated dollar sum of the economic benefit that the Respondent gained through noncompliance. The Department may increase the penalty by the approximated dollar sum of the economic benefit, provided that the sum penalty does not exceed the maximum allowed for the violation by rule or statute. After determining the base penalty and applying the civil formula penalty above to determine the gravity and magnitude based portion of the civil penalty, "EB" is to be determined as follows:

(i) Add to the formula the approximate dollar sum of the economic benefit gained through noncompliance, as calculated by determining both avoided costs and the benefits obtained through any delayed costs, where applicable;

(ii) The Department need not calculate nor address the economic benefit component of the civil penalty when the benefit obtained is de minimis.

(2) In addition to the factors listed in section (1) of this rule, the Director may consider any other relevant rule of the Department and shall state the effect the consideration had on the penalty. On review, the Department shall consider the factors contained in section (1) of this rule and any other relevant rule of the Department.

(3) The Department may reduce any penalty based on the Respondent's inability to pay the full penalty amount. If the Respondent seeks to reduce the penalty, the Respondent has the responsibility of providing to the Department documentary evidence concerning Respondent's inability to pay the full penalty amount:

(a) When the Respondent is currently unable to pay the full amount, the first option should be to place the Respondent on a payment schedule with interest on the unpaid balance for any delayed payments. The Department may reduce the penalty only after determining that the Respondent is unable to meet a long term payment schedule;

(b) In appropriate circumstances, the Department may impose a penalty that may result in a Respondent going out of business. Such circumstances may include situations where the violation is intentional or flagrant or situations where the Respondent's financial condition poses a serious concern regarding the ability or incentive to remain in compliance.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: ODA 2-1998, f. & cert. ef. 3-3-98

603-077-0185

Written Notice of Assessment of Civil Penalty; When Penalty Payable

(1) A civil penalty shall be due and payable ten days after the order assessing the civil penalty becomes final and the civil penalty is thereby imposed by operation of law or on appeal. A person against whom a civil penalty is assessed shall be served with a notice in the form and manner provided in ORS 183.415 and OAR Chapter 137, Division 003.

(2) The written notice of assessment of civil penalty shall comply with ORS 468.135(1) and 183.090, relating to notice and contested case hearing applications, and shall state the amount of the penalty or penalties assessed.

(3) The rules prescribing procedure in contested case proceedings contained in OAR Chapter 137, Division 003 shall apply thereafter.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: ODA 2-1998, f. & cert. ef. 3-3-98

603-077-0187

Compromise or Settlement of Civil Penalty by Director

(1) Any time after service of the written notice of assessment of civil penalty, the Director may compromise or settle any unpaid civil penalty at any amount that the Director deems appropriate. Any compromise or settlement executed by the Director shall be final.

(2) In determining whether a penalty should be compromised or settled, the Director may take into account the following:

(a) New information obtained through further investigation or provided by Respondent which relates to the penalty determination factors contained in OAR 603-077-0180;

(b) The effect of compromise or settlement on deterrence;

(c) Whether Respondent has or is willing to employ extraordinary means to correct the violation or maintain compliance;

(d) Whether Respondent has had any previous penalties which have been compromised or settled;

(e) Whether the compromise or settlement would be consistent with the Department's goal of protecting the public health and environment;

(f) The relative strength or weakness of the Department's case.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: ODA 2-1998, f. & cert. ef. 3-3-98

603-077-0188

Stipulated Penalties

Nothing in OAR Chapter 603, Division 077 shall affect the ability of the Director to include stipulated penalties in a Stipulation and Final Order, Consent Order, Consent Decree or any other agreement issued under ORS Chapters 183, 468, or 468A.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: ODA 2-1998, f. & cert. ef. 3-3-98

603-077-0190

Additional Civil Penalties

In addition to any other penalty provided by law, the following violations are subject to the civil penalties specified below:

(1) Any person planting contrary to the restriction of subsection (1) of ORS 468A.580 pertaining to the open field burning of cereal grain acreage shall be assessed by the Department a civil penalty of \$25 for each acre planted contrary to the restrictions.

(2) Any person who intentionally or recklessly violates any provisions of ORS Chapters 468 or 468A or any rule or standard or order of the Department adopted or issued pursuant to ORS 468 or 468A, which results in or creates the imminent likelihood for an extreme hazard to the public health or which causes extensive damage to the environment shall incur a penalty up to \$100,000. When determining the civil penalty sum to be assessed under this section, the Director shall apply the following procedures:

(a) Select one of the following base penalties after determining the cause of the violation:

(A) \$50,000 if the violation was caused recklessly;

(B) \$75,000 if the violation was caused intentionally;

(C) \$100,000 if the violation was caused flagrantly.

(b) Then determine the civil penalty through application of the formula: $BP + ((.1 \times BP) (P + H + O + C)) + EB$, in accordance with OAR 603-077-0180(1)(c).

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: ODA 2-1998, f. & cert. ef. 3-3-98

603-077-0195

Field Burning Classification of Violations

Violations pertaining to field burning shall be classified as follows:

(1) Class One:

(a) Violation of any order of the Department listed under OAR 603-077-0175(4);

(b) Systematic failure to keep records required by a permit, rule or order;

(c) Open field burning in a manner that causes a hazard to public safety;

(d) Causing or allowing open field burning without first obtaining a valid open field burning permit;

(e) Causing or allowing open field burning or stack burning where prohibited by OAR 603-077-0110(7) or OAR 603-077-0155(4);

(f) Causing or allowing any propane flaming which results in visibility impairment on any Interstate Highway or Roadway specified in OAR 837-011-0080(1) and (2);

(g) Failing to immediately and actively extinguish all flames and smoke sources when any propane flaming results in visibility impairment on any Interstate Highway or Roadway specified in OAR 837-011-0080(1) and (2);

(h) Causing or allowing propane flaming of grass seed or cereal grain crops, stubble, or residue without first obtaining a valid propane flaming burning permit;

(i) Stack burning grass seed or cereal grain crop residue without first obtaining a valid stack burning permit;

(j) Open field burning, propane flaming, stack burning when State Fire Marshal restrictions are in effect;

(k) Causing or allowing propane flaming which results in sustained open flame in a fire safety buffer zone along any Interstate Highway or Roadway specified in OAR 837-011-0080(1) or (2);

(l) Failure to provide access to premise or records when required by law, rule, permit, or order.

(m) Any violation that causes a major harm or poses a major risk of harm to public health or the environment.

(2) Class Two:

(a) Failure to actively extinguish all flames and major smoke sources from open field or stack burning when prohibition conditions are imposed by the Department or when instructed to do so by an agent or employee of the Department;

(b) Causing or allowing a propane flaming operation to be conducted in a manner which causes or allows an open flame to be sustained;

(3) Class Three:

(a) Any violation related to open field burning, propane flaming, or stack burning which is not otherwise classified in these rules.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: ODA 2-1998, f. & cert. ef. 3-3-98