

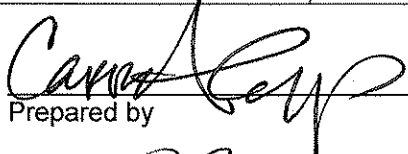
DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking
STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT

Title of Proposed Rulemaking	Small and mid-size rule boiler amendments
Statutory Authority or other Legal Authority	ORS 468, ORS 468A, 468.020, ORS 468A.025, ORS 468A.035, ORS 468A.050, ORS 468A.055, ORS 468A.070, ORS 468A.460 to 468A.515 ORS 468A.310
Statutes Implemented	ORS 468, ORS 468A, 468.020, ORS 468A.025, ORS 468A.035, ORS 468A.050, ORS 468A.055, ORS 468A.070, ORS 468A.460 to 468A.515
Need for the Rule(s)	Current Heat Smart rules under OAR chapter 340 division 262 prohibit uncertified small biomass boilers and other solid fuel boilers with heat output less than one million British thermal units per hour from being sold in Oregon. For small-scale and mid-size commercial, industrial and institutional boilers already subject to federal National Emission Standards for Hazardous Air Pollutants, the proposed rule would: • Provide an exemption from Heat Smart regulations if the owner or operator obtains construction approval under OAR chapter 340 division 210. • Require registration of boilers that are either exempt from Heat Smart certification requirements or that are above the Heat Smart threshold but below the air quality permitting thresholds. The registration would include confirmation that the boiler complies with other existing state and federal air quality regulations. Creating the proposed exemption from Heat Smart regulations would allow small-scale commercial, industrial and institutional biomass boilers already subject to federal National Emission Standards for Hazardous Air Pollutants to be sold in Oregon. The proposed registration rules would enable DEQ to track compliance for small-scale and mid-sized commercial, industrial and institutional boilers. Registration of a boiler does not authorize its operation like an air quality permit; however, it does provide DEQ with information about the location and compliance status of boilers that are not required to obtain permits.
Documents Relied Upon for Rulemaking	National Emission Standards for Hazardous Air Pollutants (40 CFR Part 63, subparts DDDDD and JJJJJ).
Requests for Other Options	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. ORS 183.335(2)(b)(G).
Fiscal and Economic Impact, Statement of Cost Compliance	
Overview	All commercial, industrial and institutional boilers are required to meet state limits on particulate emissions and opacity, as well as federal limits on hazardous air pollutants. A subset of small commercial, industrial and institutional boilers (those with a heat output of less than 1 million Btu per hour that burn solid fuel such as biomass) are also regulated through DEQ's Heat Smart program (Oregon Administrative Rules 340-262). Under current Heat Smart rules, uncertified small-scale biomass and other solid fuel boilers with heat output less than one million Btu/hr cannot be sold in Oregon. The proposed rule changes would exempt from Heat Smart regulations any small-scale commercial, industrial and institutional boiler that is subject to the National Emission Standards for Hazardous Air

	Pollutants if the owner or operator obtains construction approval under OAR chapter 340 division 210. Additionally, the proposed rule changes would require registration of boilers that are either exempt from Heat Smart certification requirements or that are above the Heat Smart threshold but below the air quality permitting thresholds. Registration would include confirmation that the boilers comply with other existing state and federal air quality regulations. The proposed rule changes would allow uncertified small solid fuel boilers (those with a heat output less than one million Btu per hour) to be sold in Oregon. In addition, registration would enable DEQ to track compliance for mid-sized commercial, industrial and institutional boilers that are below the permitting thresholds.	
Impacts to the General Public	DEQ does not anticipate that the proposed rules would have any direct, negative fiscal or economic impacts on the general public but there could be indirect impacts if the owner or operator increases prices for services or products to offset the cost of source testing or other costs related to the proposed rules. If they occur, DEQ expects price increases would be minor but does not have information available to make an accurate estimate.	
Impacts to Small Business (50 or fewer employees – ORS183.310(10))	Under the proposed rules, uncertified boilers subject to National Emission Standards for Hazardous Air Pollutants and with heat outputs less than one million British thermal units per hour would be exempt from Heat Smart regulations. As a result, these small biomass boilers could be sold in Oregon (the Heat Smart regulations currently restrict their sale). A positive economic benefit would accrue to small businesses who wish to manufacture or use small biomass or other solid fuel heating systems in commercial, industrial and institutional applications. The benefit would be specific to each business and DEQ does not have available information to make an accurate estimate. Small businesses that currently only have the option of installing gas or diesel boilers, or larger solid fuel burning boilers that were not restricted by Heat Smart regulations, could realize a cost savings by installing small or mid-sized solid fuel boilers that would be exempt under the proposed rules. The proposed rules would exempt boilers from Heat Smart regulations if they are subject to National Emission Standards for Hazardous Air Pollutants and comply with existing construction approval under OAR 340 division 210. In addition, the proposed rules would establish simple registration requirements for the owners of small-scale and mid-size commercial, industrial and institutional boilers that are below DEQ's air quality permitting threshold for boilers (for solid fuel boilers, the permitting threshold is the lower of 10 million British thermal units per hour heat input, 10 tons per year of any single criteria pollutant or 5 tons per year of PM10 if located in a PM10 nonattainment or maintenance area). The registration would include confirmation that boilers must meet existing state and federal air quality standards, including a limit of 0.1 grains particulate per dry standard cubic feet under OAR 340-228-0210, an opacity limit of 20 percent except for three minutes per hour under OAR 340-208-0110, and National Emission Standards for Hazardous Air Pollutants under 40 CFR Part 63, subpart JJJJJ. There would be no registration fee but there could be costs associated with source testing in order to demonstrate compliance with the grain loading standard. Source testing costs for grain loading and opacity standards typically range from \$3,500 to \$6,500; however, the proposed rules provide a source testing alternative that could eliminate this cost for owners or operators of boilers. The proposed rules would allow an owner or operator of a boiler to submit source testing performed by an independent third party on behalf of the boiler manufacturer. There may be increased costs to boiler manufacturers if owners or operators ask the manufacturer to test boilers to demonstrate compliance with existing state emission standards.	
Cost of Compliance on Small Business (50 or fewer employees – ORS183.310(10))	a) Estimated number of small businesses subject to the proposed rule	DEQ knows of three facilities that currently need an exemption from the Heat Smart rules under the proposed rules to complete planned biomass boiler projects. In addition to boilers needing an exemption from Heat Smart regulations, the proposed rules would require registration of all new boilers subject to National Emission Standards for Hazardous Air Pollutants under 40 CFR Part 63, subpart JJJJJ that are below permitting thresholds, and would authorize DEQ to require registration for existing boilers at a future date to be determined by DEQ. DEQ does not know how many boilers would be required to register at this time. DEQ and the U.S. Environmental Protection Agency plan to identify the affected businesses as part of implementing the National Emission Standards for Hazardous Air Pollutants for small and mid-size boilers.

	b) Types of businesses and industries with small businesses subject to the proposed rule	Businesses, industries and institutions that operate boilers with maximum heat input capacities below 10 million British thermal units per hour that are not currently subject to permitting could be subject to the proposed rules. Affected facilities could include small commercial and industrial businesses as well as institutions, such as schools and hospitals that operate boilers with maximum heat inputs below 10 million British thermal units per hour.
	c) Projected reporting, recordkeeping and other administrative activities required by small businesses for compliance with the proposed rule, including costs of professional services	Owners or operators of boilers subject to the proposed rules would be required to register with DEQ to verify that their boilers comply with existing applicable state and federal emission standards. Owners or operators would need to retain source test records on-site for five years. The records would need to be made available to DEQ upon request. The proposed rules would establish simple registration requirements for small-scale and mid-size commercial, industrial and institutional boilers. There would be no registration fee but there would be simple record keeping associated with source testing required to verify compliance with the grain loading standard and National Emission Standards for Hazardous Air Pollutants. The registration would need to be updated upon conducting biennial tune-ups required by the federal standards. Small businesses could either choose to administer these duties in-house or hire an independent third party to conduct them. DEQ lacks the information it would need to estimate the cost of hiring professional services.
	d) The equipment, supplies, labor, and increased administration required by small businesses for compliance with the proposed rule	Online registration would require a computer and internet access for owners or operators. DEQ estimates that the initial registration would take one to two hours and biennial registration updates would take less than an hour for each update. See also source test costs above.
	e) A description of the manner in which DEQ involved small businesses in the development of this rulemaking	DEQ held a meeting with several manufacturers of solid fuel boilers to review the technical aspects of the rule.
	Impacts on Large Business (all businesses that are not "small businesses" under ORS183.310(10))	DEQ anticipates that the fiscal and economic impacts on large businesses would be the same as the impacts on small businesses described above if the business owned or operated a boiler subject to the proposed rules.
	Impacts on Local Government	DEQ anticipates that the fiscal and economic impacts on local governments would be the same as the impacts on small businesses described above if the local government owned or operated a boiler subject to the proposed rules.
	Impacts on State Agencies other than DEQ	DEQ anticipates that the fiscal and economic impacts on state agencies other than DEQ would be the same as the impacts on small businesses described above if the state agency owned or operated a boiler subject to the proposed rules.
	Impacts on DEQ	The proposed rule would require DEQ to notify owners or operators of affected boilers; develop and implement a registration database; perform ongoing outreach and technical assistance to registrants; and develop implementation guidance. DEQ also plans to develop model contract language that a business could use when purchasing a boiler to ensure that all applicable state and federal emissions standards would be met. DEQ estimates it would cost between \$27,200 and \$40,800 to develop the necessary registration database. Implementation of the proposed rules, including development of the registration database, would be conducted by existing staff.

Assumptions	DEQ estimated costs associated with source testing based on the experience of DEQ source testing coordinators and input from stakeholders. The cost impacts to DEQ associated with developing a registration database, on-line registration forms and web page are based on estimates from DEQ's Business Services Division.
Housing Costs	DEQ determined that this proposed rule would 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. The proposed rules only apply to unpermitted commercial, institutional and industrial boilers.
Administrative Rule Advisory Committee	DEQ met with stakeholders to review the technical aspects of the rule. No policy advisory committee was formed because there were no significant policy issues to resolve.


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7-15-11
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