**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**Chapter 340**

**Proposed Rulemaking**

**STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT**

**Small and mid-size boiler amendments**

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| **Title of Proposed Rulemaking** | **Exemptions from Heat Smart certification requirements for small-scale commercial, industrial and institutional boilers and registration requirements for small and mid-sized boilers subject to National Emission Standards for Hazardous Air Pollutants** | |
| **Statutory Authority or other Legal Authority**  **Statutes Implemented** | ORS 468, 468A, 468.020,468A.050 | |
| ORS 468, 468A, 468.020, 468A. 025, 468A.035,460 to 468A.515 | |
| **Need for the Rule(s)** | Small biomass boilers with heat output less than one million British thermal units per hour may not be sold in Oregon under current Heat Smart rules. Heat Smart rules are under OAR chapter 340 division 262. For small-scale commercial, industrial and institutional biomass boilers already subject to federal National Emission Standards for Hazardous Air Pollutants, the proposed rule would:   * Provide an exemption from Heat Smart regulations. * Require the owner and operator to register the boiler with DEQ and require confirmation that the boiler complies with other existing state and federal air quality regulations.   Creating the proposed exemption option 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 mid-sized commercial, industrial and institutional boilers that are above the Heat Smart threshold of one million British thermal units per hour heat output, but below the permitting threshold of 10 million British thermal units per hour heat output. While registration of a boiler does not authorize operation like a permit, it does provide DEQ with information about the location and compliance status of non-permitted boilers. | |
| **Documents Relied Upon for Rulemaking** | National Emission Standards for Hazardous Air Pollutants (40CFR Part 63, subpart JJJJJJ) | |
| **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** | Small biomass boilers with heat output less than one million British thermal units per hour may not be sold in Oregon under the Heat Smart regulations under OAR chapter 340 division 262. For small-scale commercial, industrial and institutional biomass boilers already subject to federal National Emission Standards for Hazardous Air Pollutants, the proposed rule would: provide an exemption from Heat Smart regulations, require the owner and operator to register the boiler with DEQ, and require confirmation that the boiler complies with other existing state and federal air quality regulations.  Creating the proposed exemption option 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. | |
| **Impacts to the General Public** | DEQ does not anticipate 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. If they occur, DEQ expects price increases would be minor but does not have available information to make an accurate estimate. | |
| **Impacts to Small Business**  (50 or fewer employees –ORS183.310(10)) | Under the proposed rules, small biomass boilers subject to National Emission Standards for Hazardous Air Pollutants with heat outputs less than one million British thermal units per hour would be exempt from Heat Smart regulations. The proposed rules would allow these small biomass boilers be sold in Oregon. A positive economic benefit would accrue to small businesses who wish to manufacture or use small biomass 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 currently limited to installing gas boilers, diesel boilers or larger solid fuel burning boilers that were not restricted by Heat Smart regulations could realize a cost savings by installing a small or mid-sized boiler exempt under the proposed rules.  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 of 10 million British thermal units per hour heat output. The registration would clarify the 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 JJJJJJ.  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 for state grain loading and opacity standards typically costs from $3,500 to $6,500 However, the proposed rules provide a source testing alternative that would 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 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.  The proposed rules would authorize DEQ to require registration for existing boilers at a later date to be determined by DEQ. DEQ does not know how many boilers would be required to register and DEQ and EPA are in the process of identifying the universe of affected businesses for future outreach. DEQ and the U.S. Environmental Protection Agency plan to contact businesses with existing boilers as part of implementing the federal emission standard for hazardous air pollutants for small 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 output capacities below 10 million British thermal units per hour that are not currently subject to permitting would be subject to the proposed rules. Affected facilities could include businesses that have fewer than 50 employees and schools and hospitals that operate solid fuel boilers with maximum heat outputs 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 with heat outputs less than 10 million British thermal units per hour 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 for five years on-site. The records would need to be 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 recordkeeping associated with source testing required to verify compliance with the state grain loading standard and federal emission standards for hazardous air pollutants. It is very unlikely that small business would hire a specific professional to report, maintain and perform administrative activities. |
| 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 meetings with manufacturers of small-scale 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. | |
| **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 and operators of affected boilers, develop and implement a registration database, perform ongoing outreach and technical assistance to registrants, 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, and to develop and implement enforcement guidance for DEQ permitting staff. Costs associated with outreach and technical assistance, developing contract language for boiler purchases, developing and implementing enforcement guidance would be covered by existing resources. DEQ estimates it would take between eight to twelve weeks to develop a registration database based on DEQ’s Business Services Division hourly rate of $85. The estimated project cost would be between $27,200 and $40,800. | |
| **Assumptions** | DEQ estimated costs associated with source testing 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 with heat output capacities less than 10 million British thermal units per hour. | |
| **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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