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| **Comment Category** | **Comment** | **DEQ Response to Comment** |
| In support of proposal. | 1. AOI supports incorporation of the (nitrogen dioxide, sulfide dioxide and lead ambient air quality) standards, as well as the new, 1-hour Significant Air Quality Impact Levels for Nitrogen dioxide and sulfur dioxide.
 | 1. DEQ acknowledges comments in support of the proposed rule changes.
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| In support of proposal.Wait for clear EPA guidance.In support of proposal.Request for status updates. | 1. NWPPA supports DEQ’s proposed changes to Oregon Administrative Rules Chapter 340 division numbers 200 and 202 for implementation of federal NAAQS for nitrogen dioxide, sulfur dioxide and lead.

NWPPA remains highly interested in continuing implementation activities for the sulfur dioxide standards and encourages DEQ to wait for clear nationwide guidance from EPA before commencing with implementation of the program. Once guidance is developed, NWPPA requests the opportunity to discuss DEQ’s strategy for implementing the standard.NWPPA believes that DEQ has agency personnel, administrative and support capacity, stable funding, statutory authority, rule writing ability and comprehensive administrative rules in place providing a complete regulatory infrastructure to implement changes to federal National Ambient Air Quality Standards.NWPPA strongly encourages the EQC and the EPA to promptly approve the proposed administrative rule changes for Oregon’s SIP for nitrogen dioxide, sulfur dioxide and lead NAAQS. Given our role in Oregon, NWPPA requests that it be notified of developments in DEQ’s efforts to obtain approval of these rules into the SIP. | 1. DEQ acknowledges comments in support of the proposed rule changes.

In July 2013, EPA completed its initial round of area designations for the 1-hr SO2 NAAQS in areas of the country where monitors are located and the data collected indicates ambient air concentrations of SO2 are in violation of the standard. Because there are relatively few 1-hr SO2 monitors in the existing monitoring network, the initial round of area designations did not include Oregon. EPA intends to propose the SO2 Data Requirements Rule in 2014, and will solicit comments on how to move forward with nationwide areas designations as part of that rulemaking. DEQ will review the current status of EPA’s rule and guidance as it proceeds with implementation of this rule and welcomes input from NWPPA on issues associated with both SO2 modeling and monitoring. DEQ acknowledges the comment asserting the agency has adequate resources to implement the revised NAAQS for nitrogen dioxide, sulfur dioxide and lead.EPA plans to complete 1-hr SO2 area designations in the remainder of the country, including Oregon, in 2017. Between 2014 and 2017, DEQ anticipates developing a monitoring plan and consulting with sources to review permit applications in consideration of the 1-hr SO2 NAAQS. For more information on past and planned EPA actions with regard to the 1-hr SO2 NAAQS, please see <http://www.epa.gov/airquality/sulfurdioxide/implement.html>The status of approval actions related to Infrastructure SIP submittals is included in the U.S. EPA’s public participation process. Outcomes of completeness and approval reviews by the US EPA are published in the Federal Register and all of EPA’s actions are posted on regulations.gov, where interested parties can sign up for email alerts and submit comments electronically. DEQ encourages NWPPA to visit regulations.gov for periodic federal approval updates on this infrastructure SIP submittal |
| Request to add applicability language for delegating authority to LRAPA. | 1. LRAPA believes it would be beneficial for EPA, DEQ and LRAPA if DEQ were to include language which would provide LRAPA authority by reference for the provisions of this rulemaking:

LRAPA suggests such a provision be added as a new section to division 202 (e.g., OAR 340-202-0020).  For purposes of the division 200 changes, the provision could replace the existing language in OAR 340-200-0010(3), or added specifically to the OAR 340-200-0020 Table 1; LRAPA prefers the former. | 3. DEQ acknowledges comment and proposes to amend Oregon Administrative Rule chapter 340, division 202 to adopt an applicability section (OAR 340-202-0020). DEQ believes that including such a provision in Division 200 would be beyond the scope of this rulemaking because Division 200 covers pollutants other than sulfur dioxide, nitrogen dioxide and lead, and is therefore not proposing to add similar applicability language to Division 200 at this time. DEQ will work with LRAPA to determine the best path forward to accomplishing the objective of streamlining rulemaking by authorizing LRAPA to implement the Commission’s rules directly in Lane County. |
| Opposes adoption of 1-hr NO2 and SO2 Significant Air Quality Impact Levels  | 1. Oregon’s proposal, like EPA’s SIL rule, is contrary to the Clean Air Act. Oregon must revise its rulemaking to remove the Significant Air Quality Impact Levels from the proposal, and re-propose it’s rulemaking to address the issues in these comments.

The 1-hour NO2 and SO2 Significant Air Quality Impact Levels proposed for adoption under OAR 340-200-0020, Table 1, are exemptions from compliance with Section 165 of the Clean Air Act, 42 U.S.,C. §7475, even where a proposed source or modification would cause or contribute to a violation of the NAAQS. The United State Court of Appeals for the District of Columbia held that the Significant Impact Levels promulgated by the U.S. EPA were illegal in *Sierra Club v. E.P.A*., 705 F.3d 458 (D.C. Cir. 2013). The Significant Air Quality Impact Levels proposed by DEQ in this rulemaking are similar in effect to the EPA rules found infirm by the court.According to the Court, the only legal SIL is one that does “not allow the construction or modification of a source to evade the requirements of the Act...” *id*. at 464. The court made clear that regulations that “allow permitting authorities to automatically exempt sources with projected impacts below the SILs from having to make the demonstration required under 42 U.S.C. § 7475(a)(3) [the cumulative air quality analysis], even in situations where the demonstration may require a more comprehensive air quality analysis,” are illegal under the Clean Air Act. *Id.* at 465.Oregon’s proposal includes Significant Air Quality Impact Levels that allow sources with impacts less than the Significant Air Quality Impact Levels to avoid making the demonstration required by 42 U.S.C. §7475(a)(3), regardless of other information about the source or area. *See* OAR 340-200-0020(132) The Clean Air Act requires that any major emitting facility that proposed to construct or modify in an area that is designated as in attainment for the NAAQS must demonstrate that it will not cause or contribute to air pollution in excess of the NAAQS.Oregon’s regulation would allow unlimited numbers of sources whose impacts are less than the Significant Air Quality Impact Levels to cumulatively cause or contribute to ambient concentrations higher than the NAAQS. Additionally, Oregon’s regulation would allow new or modified sources in upwind locations to contribute to existing violations in downwind nonattainment areas, since the upwind sources in Oregon would not be required to demonstrate that they would not cause or contribute to a violation of the NAAQS or increment. | 4. DEQ acknowledges the comments regarding the proposed 1-hr Significant Air Quality Impact Levels (SILs) for nitrogen dioxide and sulfur dioxide and recognizes that the court decision affects how SILs may be used. However, DEQ cannot correct the issue in this rulemaking because it only proposes the levels for 1-hr NO2 and SO2 SILs and does not specify how they are to be used.  An amendment regarding how SILs are implemented, which would impact SILs for other pollutants in addition to NO2 and SO2, would be beyond the scope of this rulemaking. DEQ consulted with EPA Region 10 and plans to draft revisions to Oregon Administrative Rules to address the court decision referenced in the comment.Specifically, DEQ plans to address the court decision in the upcoming Permitting Program Updates rulemaking proposal scheduled to be noticed and out for public comment on October 1, 2013 with EQC consideration scheduled for March 2014. DEQ plans to propose rule amendments such that SILs would not provide an automatic exemption from cumulative air quality analysis demonstrations if a source’s modeled emissions are below the applicable SIL, but would instead be one of several factors considered by DEQ on a case-by-case basis to ensure that a proposed source does not cause or contribute to a violation of the NAAQS or consumption of a PSD increment.   |