

Oregon Department of Environmental Quality

**ENTER NOTICE DATE**

Notice of Proposed Rulemaking

 **Infrastructure SIP for NO2, SO2 and Lead**

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|  **Overview** |

Updates to the Oregon State Implementation Plan (SIP) are needed to ensure that Oregon DEQ has the authority to implement the current National Ambient Air Quality Standards (NAAQS) for nitrogen dioxide (NO2), sulfur dioxide (SO2) and lead (Pb) under the Clean Air Act. The proposed rule amendments update the infrastructure elements of Oregon’s SIP for these three “criteria pollutants” and allow for approval by the U.S. Environmental Protection Agency (EPA) of the revised SIP.

Short summary

The proposed rule amendments would incorporate new and revised NAAQS for NO2, SO2 and lead into Oregon Administrative Rule (OAR) as necessary to revise the Oregon State Implementation Plan for approval by EPA.

The proposal includes the following actions:

* Amend OAR 340-202-0100to incorporate the primary and secondary National Ambient Air Quality Standards for Nitrogen Dioxide, adopted by the EPA February 9, 2010 and effective on April 12, 2010.
* Amend OAR 340-202-0070 to incorporate the primary 1-hour National Ambient Air Quality Standard for Sulfur Dioxide, adopted by the EPA June 22, 2010 and effective on August 23, 2010.
* Amend OAR 340-202-0130 to incorporate the primary and secondary National Ambient Air Quality Standards for lead, adopted by the EPA November 12, 2008 and effective on January 12, 2009.

In addition to the rule amendments proposed above, three “crosswalk” documents titled “Infrastructure SIP Submittal documents for Purposes of Clean Air Act Sections 110(a)(1) and (2)” are included for NO2, SO2 and lead. These crosswalks identify the Oregon Administrative Rules and corresponding Oregon Revised Statutes (ORS) that provide DEQ the necessary authorities to implement requirements of Sections 110(a)(1) and (a)(2) of the Clean Air Act for NO2, SO2 and lead. They are included for EQC approval and submittal to EPA to document that Oregon’s Infrastructure SIP for NO2, SO2 and lead meets the requirements of the CAA.

Brief history

Section 110 of the Clean Air Act, 42 USC § 7410, requires state and local air pollution control agencies to adopt federally approved control strategies to minimize air pollution. The resulting body of regulations is known as the State Implementation Plan (SIP).

State Implementation Plans serve two main purposes:

1. To demonstrate that the state has the basic air quality management program components in place to implement new or revised NAAQS; and
2. To identify the emissions control requirements the state will rely upon to attain and/or maintain the primary and secondary NAAQS.

All states are required to submit infrastructure SIPs with general infrastructure elements showing the state has the capacity to implement new or revised NAAQS. Infrastructure SIP submittals must include the basic programrequirements for managing air quality required in Section 110(a)(2) of the Clean Air Act (CAA), as listed in Figure 1 below.

 **Figure 1: Required Infrastructure Elements Tracked for Each State**

Section 110(a)(2)(A) Emission limits and other control measures
Section 110(a)(2)(B) Ambient air quality monitoring/data system
Section 110(a)(2)(C) Program for enforcement of control measures
Section 110(a)(2)(D)(i) - I Prong 1: Interstate transport - significant contribution
Section 110(a)(2)(D)(i) - I Prong 2: Interstate transport - interfere with maintenance
Section 110(a)(2)(D)(i) - II Prong 3: Interstate transport - prevention of significant deterioration
Section 110(a)(2)(D)(i) - II Prong 4: Interstate transport - protect visibility
Section 110(a)(2)(D)(ii) - Interstate and international pollution abatement
Section 110(a)(2)(E) Adequate authority and resources
Section 110(a)(2)(F) Stationary source monitoring system
Section 110(a)(2)(G) Emergency power
Section 110(a)(2)(H) Future SIP revisions
Section 110(a)(2)(J) Consultation with government officials; Public notification; PSD and visibility protection
Section 110(a)(2)(K) Air quality modeling/data
Section 110(a)(2)(L) Permitting fees
Section 110(a)(2)(M) Consultation/participation by affected local entities[[1]](#footnote-1)

SIPs generally establish limits or work practice standards to minimize emissions of the air pollutants (and their precursors) for which EPA has issued air quality criteria (the “criteria pollutants”). The six current criteria pollutants are sulfur oxides (sulfur dioxide as indicator), particulate matter, oxides of nitrogen (nitrogen dioxide as indicator), lead, carbon monoxide, and ozone. EPA has established NAAQS for these pollutants and has updated these standards over time.

As the NAAQS change, states must submit revisions to their infrastructure SIP to reflect these changes. There are three overarching activities that occur when a National Ambient Air Quality Standard is added or revised, as summarized below.

* **Within two years after NAAQS promulgation:** With input from the states and tribes, EPA must identify or "designate" areas as meeting (attainment areas) or not meeting (nonattainment areas), the standards. Designations are based on the most recent set of air monitoring data. CAA Section 107(d)(1)(B), 42 USC § 7407(d)(1)(B).
* **Within three years after NAAQS promulgation:** All states must submit plans, known as state implementation plans (SIPs), to show they have the basic air quality management program components in place to implement a new or revised NAAQS, as specified in Clean Air Act section 110. These plans are often called "infrastructure SIPs”. CAA Section 110(a)(1), 42 USC § 7410(a)(1).
* **Within 18-36 months after designations:** Due dates for nonattainment area SIPs are based on the area designation date and are generally due no later than 18 months from the date of designation. Each nonattainment area SIP must outline the strategies and emissions control measures that show how the area will improve air quality and meet the NAAQS. CAA Section 172, 42 USC § 7502.

This proposal addresses the second requirement listed above that states must submit infrastructure SIPs within three years of a NAAQS revision to demonstrate that they have the basic air quality program components in place to implement the revised NAAQS. The rule amendments would revise the existing Ambient Air Quality Standards for NO2, SO2 and lead under Oregon Administrative Rule chapter 340, division 202 to reflect the new standards adopted by the EPA.

EPA has revised the NAAQS to protect the public from adverse health effects, as appropriate under CAA Section 109, by:

* Replacing the annual and 24-hour primary SO2 standards with a new 1-hour standard (*see* 75 Federal Register 35520);
* Adding a new 1-hour NO2 primary standard, to supplement the existing annual standard (*see* 75 Federal Register 6474); and
* Revising the level of the primary and secondary lead standards (*see* 73 Federal Register 66964).

To date, EPA has taken the following actions with regard to area designations for the nitrogen dioxide, sulfur dioxide and lead NAAQS in Oregon:

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| **Oregon NAAQS Designations** |
| **2008 Pb** | EPA designated all of Oregon as unclassifiable/attainment in a final rule published on 11/22/2011 (76 Federal Register 72097), effective 12/31/2011.   |
| **2010 NO2**  | EPA designated all areas of the country as unclassifiable/attainment in a final rule published on 2/17/2012 (77 Federal Register 9532), effective 2/29/2012.  |
| **2010 SO2** | EPA has not yet taken action on any designations under the revised standards, but has indicated that it intends to defer designations for many the areas of the country for the 2010 SO2 NAAQS, including Oregon. The Governor has formally requested that all of Oregon be initially designated as unclassifiable under the new 1-hour SO2 standard. |

The deadlines for Oregon adoption and submittal to EPA of the NO2, SOs and lead Infrastructure SIPs are outlined in table X below:

In consideration of existing workload and other air quality planning priorities and obligations, Oregon DEQ’s Air Quality Division made the decision to postpone submittal of these infrastructure SIPs until EPA Guidance was available for reference. To date, EPA has issued a draft multi-pollutant guidance document addressing the infrastructure elements of a State Implementation Plan. In consultation with EPA Region 10, DEQ has used this guidance as the primary resource for developing this proposal. In order to streamline the submittal process, DEQ has bundled the necessary rule amendment and SIP revisions for NO2, SO2 and lead into one submittal for EPA approval.

In addition to the rule amendments outlined above, this proposal also includes three documents referred to as “crosswalks” (see Attachments X-X). The crosswalks are included with this proposal for EQC approval and DEQ submittal to EPA as reference documents to demonstrate that the Oregon SIP has the required infrastructure elements to implement the NAAQS for NO2, SO2 and lead as specified in Section 110 of the Clean Air Act. The crosswalks address the required infrastructure elements of Section 110(a)(1) and 110(a)(2), with some exceptions, as discussed in more detail below. While the crosswalks are not considered part of the official record of Oregon’s SIP, they are proposed for submittal to EPA as reference tools to illustrate how applicable Oregon Administrative Rules and authorizing Oregon Revised Statutes correspond to federal Clean Air Act Section 110(a)(1) and (a)(2) requirements for the purpose of Infrastructure SIP submittals. DEQ has made an effort to include the relevant OARs in the crosswalks for ease of reference. However, while developing the reference documents, staff learned that the information used to create the crosswalks may contain an unknown margin of error with regard to which Oregon Administrative Rules have been formally approved by EPA as part of the Oregon SIP. As a result of this discovery, it should be noted that the official record of Oregon Administrative Rules that constitute the Oregon State Implementation Plan can be located in the Federal Register.

Regulated parties

Parties affected by this proposal include air pollution sources that, when undergoing initial permitting or modifications, are above the Significant Air Quality Impact level and need to conduct modeling for a Prevention of Significant Deterioration (PSD) determination. Examples of affected sources may include but are not limited to landfills that generate SO2 emissions when combusting hydrogen sulfide to generate electricity or natural gas electrical generating facilities. Facilities such as data storage and processing server farm centers with multiple back-up diesel generators may find themselves at risk of violating the new 1-hour primary NO2 standard, and may need to purchase monitoring equipment necessary to demonstrate compliance with the NAAQS. More information on the parties potentially affected by this proposal is included under the section titled “Statement of fiscal and economic impact”.

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|  **Crosswalk Submittals, Interstates Transport, and Bundled rulemaking**  |

Crosswalks

As mentioned previously, this report is accompanied by three documents referred to as “crosswalks” (see Attachments X-X) identifying DEQ authorities, rules, programs and agreements in place which provide the necessary infrastructure elements of Oregon’s SIP to implement Sections 110(a)(1) and (a)(2) of the Clean Air Act. A separate crosswalk is provided for each pollutant included in this rulemaking proposal, each addressing the required infrastructure SIP elements (CAA Section 110(a)(2)(A) - 110(a)(2)(M)) with the exceptions noted below.

Certain SIP provisions identified in Section 110(a)(2) are nonattainment-related provisions, which have different due dates for submission and are not required to be submitted as part of an infrastructure SIP. Thus, the crosswalk attachments do not include references to Oregon Administrative Rules or Revised Statutes relating to Section 110(a)(2)(C) to the extent it refers to nonattainment New Source Review permit programs that are required under the CAA Section 110(a)(2)(I).[[2]](#footnote-2) Additionally, one sub-element of the infrastructure SIP requirement related to interstate transport has also been omitted from this proposal. Section 110(a)(2)(D)(i)(I) prohibits the emissions from sources in one state to significantly contribute to nonattainment and interference with maintenance of attainment areas with respect to the NAAQS in other states. EPA has requested that states exclude Section 110(a)(2)(D)(i)(I) from their infrastructure SIP submittals at this time in light of the recent decision by the U.S. Court of Appeals for the District of Columbia Circuit vacating the 2011 Cross-State Air Pollution Rule (*see EME Homer City generation, L.P. v. EPA,* 696 F .3d 7 (D.C. Cir. 2012)*).*  EPA Administrator Gina McCarthy released a memorandum November 19, 2012, describing EPA’s interpretation of the decision’s affect on states’ obligation to submit this portion of the interstate transport element as part of their infrastructure SIP submittals:

*“(T)he recent CSAPR decision made certain holdings regarding the requirement for states to submit SIPs addressing the provisions of Clean Air Act section 110(a)(2)(D)(i)(I), the good neighbor provision that addresses upwind emissions linked to NAAQS attainment problems in downwind states.  The decision states that a SIP cannot be deemed deficient for failing to meet the good neighbor obligation before the EPA quantifies that obligation.  Although (EPA) filed a petition for rehearing of the Court’s decision, including this element of the decision, and although the mandate for that decision has not yet been issued, we intend to act in accordance with the decision during the pendency of the appeal.  Therefore, at this time the EPA does not intend to make findings that states failed to submit SIPs to comply with section 110(a)(2)(D)(i)(I). To the extent states may inquire about their obligations to submit SIPs addressing this provision, we believe it would be appropriate to convey that at this time, we do not intend to make such findings with respect to section 110(a)(2)(D)(i)(I).”[[3]](#footnote-3)*

Unless the *EME Homer City* decision is reversed or otherwise modified by the Supreme Court, states are not required to submit 110(a)(2)(D)(i)(I) SIPs until the EPA has quantified their contribution to violations of the NAAQS in neighboring states. Therefore, this element of interstate transport is not included in this proposed Infrastructure SIP submittal. As a result of this court decision, EPA has further clarified that it will not issue a Finding of Failure to Submit for infrastructure SIPs with respect to the portion of interstate transport requirements related to one state causing or contributing to violations of the lead NAAQS in neighboring states at this time, as noted in table XXX above:

*“The EPA is also not, in this notice, issuing any findings of failure to submit SIPs addressing section 110(a)(2)(D)(i)(I) of the CAA. The EPA has historically interpreted section 110(a)(1) of the CAA as establishing the required submittal date for SIPs addressing all of the ‘‘interstate transport’’ requirements in section 110(a)(2)(D) including the provisions in section 110(a)(2)(D)(i)(I) regarding significant contribution to nonattainment and interference with maintenance. The D.C. Circuit’s recent opinion in EME Homer City Generation v. EPA, 696 F.3d 7, 31 (D.C. Cir. 2012), however, concluded that a SIP cannot be deemed to lack a required submission or deemed deficient for failure to meet the 110(a)(2)(D)(i)(I) obligation until after the EPA quantifies that obligation. At this time, the deadline for asking the Supreme Court to review this decision has not passed, and the United States has made no decision regarding whether to seek further appeal. Nonetheless, the EPA intends to act in accordance with the holdings in the EME Homer City opinion. Therefore, at this time the EPA is not making findings that states failed to submit SIPs to comply with section 110(a)(2)(D)(i)(I).”[[4]](#footnote-4)*

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|  **Statement of need** |

What problem is DEQ trying to solve?

Amendments to Oregon Administrative Rule are needed to incorporate the revised NAAQS for NO2, SO2 and lead into the Oregon SIP. Incorporating the current NAAQS into the Oregon SIP will allow DEQ to submit the revised infrastructure SIP to EPA for approval. Once approved, DEQ will have the authority to implement the current NAAQS for NO2, SO2 and lead in Oregon, in compliance with the Clean Air Act.

How would the proposed rule solve the problem?

The proposed rule amendments will update Oregon Administrative Rules to incorporate the current National Ambient Air Quality Standards for NO2, SO2 and lead and allow DEQ to submit required updates to the Oregon SIP to the U.S. Environmental Protection Agency for approval.

How will DEQ know the problem has been solved?

Once adopted by the EQC, the proposed rule amendments will be filed with the Secretary of State and submitted to the EPA, along with the crosswalks for approval, as updates to the Oregon SIP. DEQ will know the problem has been solved when the updated infrastructure elements of Oregon’s SIP are approved by the EPA and published in the Federal Register.

Request for other options

Because the proposed rule amendments are required to update Oregon’s SIP to incorporate the revised NAAQS for NO2, SO2 and lead and thereby comply with the requirements of the Clean Air Act, DEQ has not requested input for other options. DEQ must adopt the proposed rule amendments to enable future implementation of the NAAQS for these pollutants.

DEQ welcomes public comments on any aspect of this proposed rulemaking during the public comment period, but specifically requests public comment regarding the accuracy of the attached crosswalk documents (Attachments X-X).

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|  Rules affected, authorities, supporting documents |

Lead divisionProgram or activity

Air Quality Planning

Chapter 340 action

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| Amend | ORS 340-202-0070, 340-202-0100  |

Statutory authority

ORS 468.020, 468A.025, ORS chapter 468A

Statute implemented Legislation [IF RELATIVE]

ORS 468A.025 Enter here- House Bill or Senate Bill ####, yyyy

Documents relied on for rulemaking [ORS 183.335(2)(b)(C)](http://www.leg.state.or.us/ors/183.html)

|  |  |
| --- | --- |
| **Document title** | **Document location** |
| **NAAQS** |  |
| 40 CFR Part 50 – National Primary and Secondary Ambient Air Quality Standards | <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&rgn=div5&view=text&node=40:2.0.1.1.1&idno=40>  |
| National Ambient Air Quality Standards (NAAQS) | <http://www.epa.gov/air/criteria.html>  |
| DEQ Air Quality Annual Report and Data Summaries | <http://www.deq.state.or.us/aq/forms/annrpt.htm>  |
| **Nitrogen Dioxide** |  |
| Federal Register Volume 75, Number 26 (Tuesday, February 9, 2010)] [Rules and Regulations][Pages 6473-6537] From the Federal Register [FR Doc No: 2010-1990] [[Page 6473]] Part IIIEnvironmental Protection Agency40 CFR Parts 50 and 58 | <http://www.gpo.gov/fdsys/pkg/FR-2010-02-09/html/2010-1990.htm>  |
| Nitrogen Dioxide (NO2) Primary Standards - Documents from Review Completed in 2010 - FR Notices | <http://www.epa.gov/ttn/naaqs/standards/nox/s_nox_cr_fr.html>  |
| Nitrogen Dioxide (NO2) Primary Standards - Documents from Review Completed in 2010 | <http://www.epa.gov/ttn/naaqs/standards/nox/s_nox_cr.html>  |
| Air Pollution Nitrogen Dioxide | <http://www.epa.gov/ttn/naaqs/standards/nox/s_nox_cr.html>  |
| EPA designated all areas of the country as unclassifiable/attainment in a final rule published on 2/17/2012 (77 FR 9532) | effective 2/29/2012. See: <http://www.gpo.gov/fdsys/pkg/FR-2012-02-17/pdf/2012-3150.pdf#page=1>  |
| **Sulfur Dioxide** |  |
| Sulfur Dioxide | <http://www.epa.gov/airquality/sulfurdioxide/>  |
| Sulfur Dioxide (SO2) Primary National Ambient Air Quality Standards | <http://www.epa.gov/ttnnaaqs/standards/so2/s_so2_index.html>  |
| 40 CFR Parts 50, 53, and 58Primary National Ambient Air QualityStandard for Sulfur Dioxide; Final Rule | <http://www.epa.gov/ttnnaaqs/standards/so2/fr/20100622.pdf>  |
| Appendix A of 40 CFR Part 50 |  |
| Guidance for 1-Hour SO2 NAAQS SIPSubmissions | <http://www.epa.gov/airquality/sulfurdioxide/pdfs/DraftSO2Guidance_9-22-11.pdf>  |
| Emission Factor Documentation for AP-42Section 9.5.3 Meat Rendering Plants, Final Report | <http://www.epa.gov/ttnchie1/ap42/ch09/bgdocs/b09s05-3.pdf>  |
| [Federal Register Volume 75, Number 119 (Tuesday, June 22, 2010)][Rules and Regulations][Pages 35519-35603]From the Federal Register Online via the Government Printing Office [[www.gpo.gov](http://www.gpo.gov)][FR Doc No: 2010-13947] | <http://www.gpo.gov/fdsys/pkg/FR-2010-06-22/html/2010-13947.htm>  |
| EPA is planning to defer designations for many the areas of the country for the 2010 SO2 NAAQS, including Oregon.  See attached for **EPA letter to Oregon** and the Federal Register notice at: <http://www.gpo.gov/fdsys/pkg/FR-2013-02-15/pdf/2013-03593.pdf>  |  |
| **Lead** |  |
| EPA designated all of Oregon as unclassifiable/attainment in a final rule published on 11/22/2011 (76 FR 72097) | effective 12/31/2011.  See: <http://www.gpo.gov/fdsys/pkg/FR-2011-11-22/pdf/2011-29460.pdf#page=1>  |
| 2008 Lead Standards – Region 10 Final Designations (EPA) | <http://www.epa.gov/leaddesignations/2008standards/final/region10f.html>  |
| Area Designations for 2008 Lead Standards (EPA) | <http://www.epa.gov/leaddesignations/2008standards/index.html>  |
| Lead Implementation – Programs and Requirements for Reducing Lead | <http://www.epa.gov/airquality/lead/implement.html>  |
| Memorandum: Guidance on Infrastructure State Implementation Plan Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards. (EPA) | <http://www.epa.gov/air/lead/pdfs/20111014infrastructure.pdf>  |
| ENVIRONMENTAL PROTECTION AGENCY40 CFR Part 52 [EPA–HQ–OAR–2012–0943, FRL–9784–6] Findings of Failure To Submit a Complete State Implementation Plan for Section 110(a) Pertaining to the 2008 Lead National Ambient Air Quality Standards | <http://www.gpo.gov/fdsys/pkg/FR-2013-02-26/pdf/2013-04293.pdf> |
| **SIP Elements** |  |
| Infrastructure SIP Element Reports (EPA) | <http://www.epa.gov/airquality/urbanair/sipstatus/infrastructure.html>  |
| Region 10 SIP Process Improvement Project (EPA) | [http://yosemite.epa.gov/r10/airpage.nsf/webpage/Region+10+SIP+Process+Improvement+Project+(SIP-PIP)](http://yosemite.epa.gov/r10/airpage.nsf/webpage/Region%2B10%2BSIP%2BProcess%2BImprovement%2BProject%2B%28SIP-PIP%29)  |
| SIP – General Page (EPA) | <http://yosemite.epa.gov/r10/airpage.nsf/283d45bd5bb068e68825650f0064cdc2/b2ce4780021daa07882569de007ba77f?OpenDocument>  |
| SIP – Oregon Table of Contents (EPA) | [http://yosemite.epa.gov/r10/airpage.nsf/webpage/SIP+-+OR+Table+of+Contents?OpenDocument](http://yosemite.epa.gov/r10/airpage.nsf/webpage/SIP%2B-%2BOR%2BTable%2Bof%2BContents?OpenDocument)  |
| SIP Processing Manual | <https://cfpub.epa.gov/oarwebadmin/sipman/sipman/mToc.cfm?chap=0&i=0>  |
| State Implementation Plan Status and Information (EPA) | <http://www.epa.gov/airquality/urbanair/sipstatus/index.html>  |
| Status of SIP Requirements for Designated areas | <http://www.epa.gov/airquality/urbanair/sipstatus/reports/or_infrabypoll.html#x110_a__2__lead__2008_>  |
| Oregon SIP Table of Contents | [http://yosemite.epa.gov/r10/airpage.nsf/webpage/SIP+-+OR+Table+of+Contents?OpenDocument](http://yosemite.epa.gov/r10/airpage.nsf/webpage/SIP%2B-%2BOR%2BTable%2Bof%2BContents?OpenDocument)  |
| ENVIRONMENTAL PROTECTIONAGENCY40 CFR Part 52[EPA–HQ–OAR–2012–0943, FRL–9784–6]Findings of Failure To Submit aComplete State Implementation Planfor Section 110(a) Pertaining to the2008 Lead National Ambient Air QualityStandards | <http://www.gpo.gov/fdsys/pkg/FR-2013-02-26/pdf/2013-04293.pdf#page=1>  |
| Infrastructure SIP Element Reports | <http://www.epa.gov/airquality/urbanair/sipstatus/infrastructure.html>  |
| *EME Homer City generation, L.P. v. EPA, 696 F .3d 7* |  |
| **OREGON ADMINISTRATIVE RULES** | <http://www.deq.state.or.us/regulations/rules.htm>  |
| November 19, 2012 EPA Memorandum from Gina McCarthy RE: Next Steps for Pending Redesignation Requests and State Implementation Plan Actions Affected by the Recent Court Decision Vacating the 2011 Cross-State Air Pollution Rule | <http://www.epa.gov/airtransport/CSAPR/pdfs/CSAPR_Memo_to_Regions.pdf> |
|  |  |
| **OREGON REVISED STATUTES** | <http://www.leg.state.or.us/ors/home.htm>  |
| ATTACHMENT XXX– 24-Hour PM2.5 SIP Submittal Completeness Criteria Checklist: Confirmation/Status of 110(a)(2)(A)-(M) SIP Infrastructure Requirements For 2006 PM2.5 NAAQS (ODEQ) | ??? |
| Intergovernmental Agreement between DEQ and LRAPA (DEQ Agreement # 003-12) | ??? |
| Appendix V to Part 51—Criteria for Determining the Completeness of Plan Submissions | <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=9fe615d9103aedf220e736c5ea1ecde8&rgn=div9&view=text&node=40:2.0.1.1.2.23.11.5.36&idno=40>  |
| Intergovernmental Agreement between DEQ and LRAPA (DEQ Agreement # 003-12). |  |
|  | <http://www.gpo.gov/fdsys/pkg/FR-2013-02-26/pdf/2013-04293.pdf> |
| MOU btwn DEQ and Metro | ??? |

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|  Fee Analysis  |

This rulemaking does not involve fees.

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|  Statement of fiscal and economic impact [ORS 183.335 (2)(b)(E)](http://www.leg.state.or.us/ors/183.html) |

Fiscal and Economic Impact

States are routinely required to incorporate federal revisions to the NAAQS for criteria pollutants. DEQ anticipated the need for this rulemaking and has budgeted for the necessary resources to develop and conduct this rulemaking. Sources affected by these mandatory rule changes may incur additional costs associated with modeling for purposes of Prevention of Significant Deterioration determinations when modifying an existing facility.

Statement of Cost of Compliance

**Costs associated with PSD/NSR Modeling**

Upon adoption of the Federal NAAQS into the OARs, DEQ will be required to include the 1-hour NO2 and SO2 standards in the modeling protocol for Prevention of Significant Deterioration and New Source Review permit actions. Currently, modeling to meet the 1-hour standards is only requested. New facilities and existing facilities that undergo modifications may need to hire an environmental consulting firm to use computer simulation modeling to demonstrate compliance with the new 1-hour NO2 NAAQS. Because the NAAQS measure ambient air concentration of criteria pollutants, this proposal affects large and small businesses that emit criteria pollutants similarly.

The addition of the 1-hr NO2 and SO2 NAAQS may increase the cost of modeling analyses for sources that emit these pollutants.  Currently, these analyses are done on an as-requested basis. The modeling results could potentially require a source to add controls to meet the new 1-hr NAAQS. The costs associated with modeling analyses and any additional controls triggered by compliance with the 1-hr NO2 and SO2 NAAQS are dependent on the source being analyzed and will need to be determined on a case-by-case basis. If a source can demonstrate that the planned modification will result in an emissions increase that is less than the Significant Emission Rate (SER), no additional modeling is required.For sources with modifications that result in emissions increases above the SER, additional PSD modeling is needed. Some sources will be able to conduct modeling efforts internally, while others may need to contract for those services. Cost estimates for this type of PSD modeling could range from $10,000 to quantify emissions to upwards of $100,000 to $200,000 for consultative services for modeling if emissions rates exceed the SER.

**Costs Associated with NAAQS Monitoring**

Two types of monitoring occur with respect to measuring criteria pollutants against the NAAQS. DEQ measures ambient air quality to determine if an area meets the NAAQS, while sources conduct compliance monitoring. Compliance monitors are installed by the source at the facility, and the costs associated with operating and maintaining the monitor pursuant to DEQ protocol are borne by the source. Sources sometimes choose to contract for such services. Existing sources with permit conditions addressing the NAAQS for NO2 and SO2 are currently required to monitor for the existing standards related to these emissions, therefore the capital costs associated with the purchase of monitoring equipment has not been included in the estimated fiscal impacts associated with adhering to the monitoring requirements triggered by the implementation of the new primary 1-hour NO2 and SO2 standards. In addition to meeting the monitoring requirements, sources must also hire an independent third party to conduct quarterly audits to calibrate monitoring equipment and check the accuracy of the monitor. Costs associated with quarterly audits will vary depending on a facility’s configuration and monitoring needs.

The data provided in table **X** quantifies the number of small and large businesses that emit SO2, NO2 or lead per [ORS 183.336](http://www.leg.state.or.us/ors/183.html). The information provided in this table is an estimate based on available 2011 data. The distinction between small and large businesses is made at the parent company level and not at the individual facility level here in Oregon. Some facilities may be affected by this nuance, such that they have 50 or fewer employees but are owned by a company that as a whole employs more than 50 staff.

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| **Permit Type** | **Small Business**  | **Large Business** | **Unknown Number of Employees** | **Total Number of Facilities Per Permit Type** |
| **Under 50 Employees** | **Over 50 Employees** |
| ACDP  | 336 | 498 | 5 | **839** |
| Title V | 10 | 91 | 0 | **101** |
| **Total Per Size:** | **346** | **589** | **5** | **940** |
|   |   |   |   |   |
| ***Resource:*** | ODEQ TRAACS Database |   |   |

It is important to note that this proposal has the potential to affect large and small businesses that emit these pollutants similarly. This is because the size of a business may not correlate well with the emissions rates associated with its activities. Emission rates are what trigger additional costs associated with PSD modeling, rather than the number of employees a business has on staff.

 Impacts on general public

This rulemaking provides a health benefit to the general public by lowering the ambient air quality standards in Oregon for NO2, SO2 and lead. Although the monetary value of these health benefits have not been quantified by EPA or DEQ, it is generally expected that because the NAAQS are an area-wide standard, adopting the revised standards will result in air quality that is healthier to breathe than if the standards were not implemented.

Impact on other government entities other than DEQ

1. Local governments The proposed rule amendments could have implications for Metro’s regional transportation planning efforts as they pertain to the 1-hour nitrogen dioxide NAAQS with respect to near-roadway vehicle exhaust**.** Air quality monitoring near heavily-used roadways in the Portland area will begin next year. If the NO2 NAAQS is violated as a result of this monitoring, DEQ will be required to develop an attainment plan to bring the area into attainment with the 1-hr NO2 standard. When Metro adopts future transportation plans, the agency will be required to demonstrate that emissions from future transportation systems will be within the amount anticipated by DEQ’s NO2 attainment plan.
2. State agencies The proposed rule amendments do not create new requirements that state agencies must meet. However, state government agencies engaged in activities which emit NO2, SO2 or lead in quantities that could cause a violation of the NAAQS could be required to conduct modeling and/or monitoring as described above to demonstrate compliance with the standards.

Impact on DEQ [ORS 183.335](http://www.leg.state.or.us/ors/183.html)

Updates to DEQ rules are needed to ensure the department has the necessary authority to enforce and implement the ambient air quality standards for NO2, SO2 and lead. Rulemaking will be conducted by existing DEQ staff. As a result of adopting the new 1-hour primary standard for NO2 and SO2, DEQ may be required to conduct a review of PSD Modeling submittals for sources that must submit a competing source analysis. It is unknown at this time the number of sources that may require a review of PSD modeling submittals by DEQ. Additionally, DEQ will need to purchase new monitoring equipment to measure near-roadway levels of NO2 for the new 1-hour primary standard. Monitors used for measuring ambient levels of NO2 and SO2 range on average from $6,000-$13,000. DEQ’s Air Quality Division is in the process of developing a monitoring plan for approval by EPA to determine the number and location of monitors needed.

Impact on large businesses (all businesses that are not small businesses below)

Natural gas electrical generating facilities and facilities such as data storage and processing server farm centers with multiple back-up diesel generators may find themselves at risk of violating the new 1-hour primary NO2 standard, and may need to purchase monitoring equipment necessary to demonstrate compliance with the NAAQS. Existing facilities that are currently subject to the existing NAAQS monitoring requirements for these pollutants will already have these

Impact on small businesses (those with 50 or fewer employees) [ORS 183.336](http://www.leg.state.or.us/ors/183.html)

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| a) Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.  | Because the NAAQS constitute an area-wide cap on criteria pollutants, potentially all small businesses in Oregon subject to the NAAQS for NO2, SO2 and lead could be impacted. See table XXX for an estimate of the number of small businesses that generate NO2, SO2 or lead emissions. |
| b) Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule. | New or existing expanding facilities will likely need to hire a consultant to demonstrate compliance with the new 1-hour NO2 NAAQS. The costs associated with consultation is expected to be in the low range of cost estimates provided above for large businesses. |
| c) Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule. | Please see the section above titled: “Statement of Cost of Compliance”. Equipment and other requirements required of small businesses to comply with the new NAAQS are expected to be similar to those of large businesses. |
| d) Describe how DEQ involved small businesses in developing this proposed rule. | DEQ did not involve small businesses in the development of this rulemaking. The proposed rule amendments are required in order to align state rules with federal Clean Air Act requirements and provide DEQ with the necessary authority to implement the NO2, SO2 and lead NAAQS in Oregon. |

Documents relied on for fiscal and economic impact

[THIS INFORMATION MAY BE A SUBSET OF Rules affected, authorities, supporting documents ABOVE. DOCUMENT RELIED ON FOR THE FISCAL MUST BE DUPLICATED HERE TO MEET APA REQUIREMENTS. ]

|  |  |
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| **Document title** | **Document location** |
| TRAAC datatbase | Information made available upon request. |
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Advisory committee

DEQ did not appoint an advisory committee for the proposed permanent rule amendments. This rulemaking proposal is necessary to align Oregon Administrative Rules with federally revised NAAQS under the Clean Air Act. The proposed changes are required to demonstrate that Oregon DEQ has the appropriate rules, programs and agreements in place to implement the Clean Air Act.

Housing cost

To comply with [ORS 183.534](http://www.leg.state.or.us/ors/183.html), DEQ determined the proposed rules would have no effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. The proposed rules only affect sources which are subject to the NAAQS for NO2, SO2 and lead.

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|  **Federal relationship**  |

*"It is the policy of this state that agencies shall seek to retain and promote the unique identity of Oregon by considering local conditions when an agency adopts policies and rules. However, since there are many federal laws and regulations that apply to activities that are also regulated by the state, it is also the policy of this state that agencies attempt to adopt rules that correspond with equivalent federal laws and rules..."*

Relationship to federal requirements

This rulemaking does not result in any differences from or additions to federal requirements. The proposed amendments align state rules with federal requirements under Sections 110(a)(1) and (a)(2) of the Clean Air Act.

The proposed rule changes comply with and implement the following federal requirements

* 40 CFR Section 50.4, National primary ambient air quality standards for sulfur oxides (sulfur dioxide).
* 40 CFR Section 50.11, National primary and secondary ambient air quality standards for oxides of nitrogen (with nitrogen dioxide as the indicator). 40 CFR Section 50.16 National primary and secondary ambient air quality standards for lead.
* 40 CFR Section 50.17 National primary ambient air quality standards for sulfur oxides (sulfur dioxide).

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|  Land use  |

*“It is the Commission's policy to coordinate the Department's programs, rules and actions that affect land use with local acknowledged plans to the fullest degree possible.”*

 [ORS 197.180](http://www.leg.state.or.us/ors/197.html), [OAR 660-030](http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_660/660_tofc.html)

Land-use considerations

To determine whether the proposed rules involve programs or actions that are considered a *land-use action*, DEQ considered:

* Statewide planning goals for specific references. Section III, subsection 2 of the DEQ State Agency Coordination Program[🞂](http://deq05/intranet/working/guidance/stateAgencyCoordinationProgram10-MSD-009.pdf) document identifies the following statewide goal relating to DEQ's authority:

 **Goal Title**

 5 Open Spaces, Scenic and Historic Areas, and Natural Resources

 6 Air, Water and Land Resources Quality

 11 Public Facilities and Services

 16 Estuarial resources

 19 Ocean Resources

* [OAR 340-018-0030](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_018.html) for EQC rules on land-use coordination. Division 18 requires DEQ to determine whether proposed rules will significantly affect land use. If yes, how will DEQ:
	+ Comply with statewide land-use goals, and
	+ Ensure compatibility with acknowledged comprehensive plans, which DEQ most commonly achieves by requiring a [Land Use Compatibility Statement](http://www.deq.state.or.us/pubs/permithandbook/lucs.htm).
* DEQ’s mandate to protect public health and safety and the environment.
* Whether DEQ is the primary authority that is responsible for land-use programs or actions in the proposed rules.
* Present or future land uses identified in acknowledged comprehensive plans.

Determination

DEQ determined that the proposed rules listed under the Chapter 340 Action section above **do not affect** existing rules, programs or activities that are considered land-use programs and actions in OAR 340-018-0030 or in the DEQ State Agency Coordination Program.

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|   Stakeholder and public involvement |

 Advisory committee

DEQ did not convene an advisory committee. This rulemaking proposal makes necessary amendments to Oregon Administrative Rules which are part of the Oregon Clean Air Act State Implementation Plan. The proposed changes correspond with revisions to the NAAQS for NO2, SO2 and lead, but do not initiate any new rules or standards that would necessitate convening an advisory committee.

 EQC prior involvement

DEQ shares general rulemaking information with EQC through the annual DEQ Rulemaking Plan review and monthly status report. [OPTION 1] DEQ did not present additional information specific to this proposed rule revision beyond the annual rulemaking plan and the monthly rulemaking report. [OPTION 2] DEQ shared information about this rulemaking with the EQC [2a] at a facilitated hearing on Enter date using style guide format – mmm dd, yyyy, EXAMPLE: Jan. 14, 2013, [2b] through an information item on the mmm dd, yyyy EQC agenda, [2c] and in the Director's Dialogue mmm dd, yyyy.

Public notice

The August 2013[*Oregon Bulletin*](http://arcweb.sos.state.or.us/pages/rules/bulletin/past.html) will publish the Notice of Proposed Rulemaking with Hearing DEQ also:

* Posted notice on DEQ’s webpage <http://www.deq.state.or.us/regulations/proposedrules.htm> on mmm dd, yyyy.
* E-mailed notice on mmm dd, yyyy to:
* Approximately #### interested parties through GovDelivery on mmm dd, yyyy.
* #### stakeholders on the Enter other mailing lists here.
* The following key legislators required under [ORS 183.335](http://www.leg.state.or.us/ors/183.html):
	+ Enter name, title, committee here.
	+ Enter name, title, committee here.
	+ Enter name, title, committee here.
* Members of the advisory committee.
* Mailed the notice by U.S. Postal Service to ## interested parties on mmm dd, yyyy.
* Sent notice to EPA on mmm dd, yyyy.
* Enter other notices here on mmm dd, yyyy.

Public hearings

DEQ plans to hold one public hearing. The table below includes information about how to participate in the public hearing.

Before taking public comment and according to [Oregon Administrative Rule 137-001-0030](http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_001.html), [OPTION 1]the presiding officer [OPTION 2]staff presenter will summarize the content of the notice given under [Oregon Revised Statute 183.335](http://www.leg.state.or.us/ors/183.html) and respond to any questions about the rulemaking.

DEQ will add the names, addresses and affiliations of all hearing attendees to the interested parties list for this rule if provided on a registration form or the attendee list. DEQ will consider all oral and written comments received at the hearings listed below before finalizing the proposed rules. All comments will be summarized and DEQ will respond to comments on the Environmental Quality Commission staff report.

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Close of public comment period

The comment period will close on mmm dd, yyyy at ##:## p.m.

1. <http://www.epa.gov/airquality/urbanair/sipstatus/overview.html> [↑](#footnote-ref-1)
2. <http://www.epa.gov/airquality/urbanair/sipstatus/infrastructure.html> [↑](#footnote-ref-2)
3. November 19, 2012 EPA Memorandum from Gina McCarthy RE: Next Steps for Pending Redesignation Requests and State Implementation Plan Actions Affected by the Recent Court Decision Vacating the 2011 Cross-State Air Pollution Rule [↑](#footnote-ref-3)
4. ENVIRONMENTAL PROTECTION AGENCY 40 CFR Part 52 [EPA–HQ–OAR–2012–0943, FRL–9784–6] Findings of Failure To Submit a Complete State Implementation Plan for Section 110(a) Pertaining to the 2008 Lead National Ambient Air Quality Standards [↑](#footnote-ref-4)