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| **Affiliated Organization** | **Comment** | **DRAFT Response to Comments** |
| AOI | 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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| Northwest Pulp & Paper Association | 1. NWPPA supports DEQ’s proposed changes to Oregon Administr4ative Rules Chapter 340 division numbers 200 and 202 for implementation of federal NAAQS for nitrogen dioxide, sulfur dioxide and lead.
	1. 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 standard.
	2. 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.
	3. 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.
2. EPA is in the process of developing national guidance for modeling and monitoring of SO2 for determining attainment of the 1-hour standard. DEQ appreciates the suggestion to proceed slowly and if needed, based on US EPA’s final guidance, will develop an implementation strategy which will include communication and outreach activities to affected parties.
3. (left blank intentionally)

c. 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 by the US EPA are published in the Federal Register and are available to all interested parties. DEQ encourages all parties interested to visit the EPA website and Code of Federal Register for periodic federal approval updates on this infrastructure SIP submittal. |
| LRAPA | 1. LRAPA believes it would be beneficial for EPA, DEQ and LRAPA if DEQ were to include the following authority by reference for the provisions of this rulemaking:

*“Subject to the requirements in this division and ORS 468A.100 through 468A.180, the Lane Regional Air Protection Agency is designated by the Environmental Quality Commission as the Agency to implement this division within its area of jurisdiction. The requirements and procedures contained in this division must be used by the Regional Agency to implement this division unless the Regional Agency adopts superseding rules that are at least as restrictive as this division.”* These suggested revisions would allow LRAPA to adopt these changes verbatim at the LRAPA board level and potentially eliminate the need for the EQC to adopt a similar LRAPA rulemaking for EPA approval. 1. LRAPA suggests the above or similar provision be added as a new section to division 202 (e.g., OAR 340-202-0020).
2. For purposes of the division 200 changes, the above 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.
 | 1. DEQ acknowledges LRAPA’s comment and proposes to make the following revisions to this rulemaking proposal:
2. Amend OAR chapter 340, division 202 to adopt an applicability section (OAR 340-2002-0020) with the following:

 *“Subject to the requirements in this division and ORS 468A.100 through 468A.180, the Lane Regional Air Protection Agency is designated by the Environmental Quality Commission as the Agency to implement this division within its area of jurisdiction. The requirements and procedures contained in this division must be used by the Regional Agency to implement this division unless the Regional Agency has adopted or adopts ~~superseding~~ rules that are at least as ~~restrictive~~ strict as this division.”*1. 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.
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| Earthrise Law Center (on behalf of the Sierra Club) | 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.**
	1. 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.
	2. 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.
	3. 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.
	4. 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.
	5. 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.
	6. 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.
 | 1. DEQ acknowledges the comments regarding the proposed 1-hr Significant Air Quality Impact Levels for nitrogen dioxide and sulfur dioxide, recognizes the validity of the issues raised and is working with US EPA to address the issues in a future rulemaking proposal., DEQ believes that the proposed Significant Air Quality Impact Levels play an important role in implementing Oregon’s air quality permitting program as it relates to compliance with the National Ambient Air Quality Standards. DEQ also believes that comments addressing Significant Impact Levels will be addressed in the upcoming *Permitting Program Updates* rulemaking proposal scheduled to be noticed and out for public comment on October 1, 2013 with a scheduled EQC adoption of March 2014.

DEQ consulted with EPA Region 10 to draft revisions to Oregon state rules to address the court decision referenced in the comment. The *Permitting Program Updates* rulemaking proposal will include the following proposed rule amendments which pertain to the Significant Impact Levels:* Moving Significant Air Quality Impact levels from OAR 340-200-0020 Table 1 into the text of division 200 for ease of reading.
* The following language will be added in Divisions 224 and 225 to indicate that *"(T)he owner or operator must not cause or contribute to a new violation of an ambient air quality standard even if the single source impact is less than the significant impact level under OAR 340-202-0050(2)."*
* The following language will be added to the end of 202-0050(2): *“No source may cause or contribute to a new violation of an ambient air quality standard even if the single source impact is less than the significant impact level."*
* OAR 340-200-0020(132) will be renumbered to OAR340-200-0020(158).
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