

Oregon Department of Environmental Quality

**ENTER NOTICE DATE**

Notice of Proposed Rulemaking

**Corrections and Clarifications to Toxics and Nonpoint Source Regulations Rulemaking**

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| **Overview** |

Short summary

[ENTER A SHORT HIGHLEVEL SUMMARY OF THE PROPOSED RULES. THE PURPOSE IS TO HELP THE READER PICK UP THE GIST OF OUR PROPOSAL IN A SHORT PERIOD OF TIME.]

The *Corrections and Clarifications to Toxics and Nonpoint Source Regulations Rulemaking* is comprised of proposed changes to both toxics and nonpoint source regulations.  Neither rulemaking presents policy issues that need to be considered. The proposed revisions are either non-substantive corrections or clarify the water quality standard consistent with the original intent.  These rulemakings were combined for the purpose of program rulemaking efficiency.  Therefore, in some sections of this document, these two rulemakings have been addressed separately.

**Corrections and Clarifications to Toxics Regulations**

* DEQ identified the need to make certain corrections to its toxics criteria rule and associated tables. In reviewing documentation to prepare for EPA’s upcoming action (by January 31, 2013) on DEQ’s 2004 aquatic life criteria, DEQ identified typographical errors, omissions, and needed text clarifications. In addition, DEQ identified several typos associated with the human health criteria adopted in 2011. In addition, proposed changes to the Toxic Substances rule reflect the movement of the effective aquatic life criteria from Tables 20, 33A, and 33B into a new aquatic life criteria table, Table 30. As a result of this movement, Tables 20, 33A, and 33B are no longer needed and are proposed to be deleted.
* In order to ensure that all the aquatic life criteria are effective upon EPA’s action (or as soon as possible thereafter), are easily found, and are clear and useable for regulatory purposes, DEQ is proposing to undertake this rulemaking now and couple the administrative process for this rulemaking with the rule addressing nonpoint sources.
* A separate toxics rulemaking will follow this rulemaking to address more complex issues such as revisions to and derivation of aquatic life toxics criteria to address the National Marine Fisheries Service’s recent biological opinion and other updates, as needed.

**Corrections and Clarifications to Nonpoint Source Regulations**

* The need for this rulemaking has arisen as a result of a lawsuit filed by Northwest Environmental Advocates against EPA, challenging EPA’s approval of DEQ’s water quality standard for temperature. In February 2012, the U.S. District Court issued a decision requiring EPA to review and formally approve or disapprove each of the provisions listed below as water quality standards (except for OAR 340-041-0007(5), which the EQC adopted after the lawsuit was commenced). After discussions with EPA and major stakeholders, DEQ believes removal of these provisions from Division 41 is preferable.  Accordingly, DEQ has agreed to commence rulemaking and recommend removal of the provisions to the EQC.  DEQ does not believe that the provisions create authority or obligations in addition to that already provided by state or federal law.

Brief history

Enter text here

Regulated parties

Enter text here

Outline

[ENTER AN OUTLINE OF THE MAJOR POINTS OF THE PROPOSED RULES EITHER AS A TABLE OR PROSE.] Enter text here

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| **Statement of need** |

| **Proposed Rule or Topic** | **Discussion** |
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| ***Corrections and Clarifications to Toxics Regulations*** | |
| 1. **340-041-0033(1-5): Toxic Substances Rule** |  |
| What problem is DEQ trying to solve? | Currently, Oregon’s water quality criteria for the protection of aquatic life reside in three tables: Table 20, Table 33A, and Table 33B. Table 33A has been effective for NPDES permitting. Table 33B criteria were only effective after EPA approval. Table 20 contained criteria effective for all other CWA programs, such as reporting to EPA on the condition of Oregon’s waters (i.e. sections 303(d) and 305(b)). Although there were good justifications for developing the toxics tables in that manner in 2004, it has added to the complexity of determining which criteria are effective for specific water programs over the subsequent years. The EPA is expected to take regulatory action on the aquatic life toxics criteria adopted by the EQC in 2004, thereby determining which new criteria that were adopted in 2004 in Tables 33A and 33B are now effective under CWA authorities. Following EPA action, the criteria that are approved will immediately become effective, while the criteria that are disapproved will immediately revert back to criteria (if exist) last approved by the EPA and found in Table 20. Further, the criteria will apply across all CWA programs. This rulemaking proposes to combine these effective aquatic life criteria into one table: Table 30. Proposed revisions to the toxics rule remove references to Tables 20, 33A, and 33B and instead, refer to Table 30. Other proposed changes are for clarification purposes.  In addition, Table 30 contains proposed changes to either correct anticipated EPA disapproval of certain criteria, or provides additional clarification to footnotes or introductory language to Table 30. These proposed changes do not become effective until after EQC adoption and EPA approval.  There are additional proposed minor clarifications to Table 40 which contains toxics criteria for the protection of human health.  The proposed revisions to the toxics tables and to the rule do not solve the more complex issues of deriving criteria associated with the NMFS’s biological opinion and jeopardy decisions on several freshwater aquatic life toxics criteria (i.e. copper, cadmium, ammonia). A separate rulemaking to address these concerns and others will follow this rulemaking. |
| How would the proposed rule solve the problem? | Combining the aquatic life toxics criteria into one table will make it easier for DEQ staff, the public, and the regulated community to determine which criteria are effective. These criteria will also apply across CWA programs rather than being program specific. DEQ will still need to post a currently effective aquatic life toxics criteria table that will apply for the time period following EPA action and before EPA approval of rulemaking revisions it identifies as water quality standards.  In addition, DEQ anticipates that the proposed changes to Table 30 will correct the deficiencies identified by EPA in their action letter and allow EPA to promptly approve aquatic life criteria once received from DEQ. |
| How will DEQ know the problem has been solved? | DEQ will know if the problems described above have been solved based on outcomes, such as; aquatic life toxics criteria will be consistently implemented in CWA programs subject to toxics water quality standards; fewer inquiries to DEQ staff in regards to which aquatic life toxics criteria are effective; and prompt EPA approval of rulemaking revisions it identifies as water quality standards. |
| 1. **340-041-0033(7) Arsenic Reduction Policy Rule** |  |
| What problem is DEQ trying to solve? | The Arsenic Reduction Policy rule language adopted by the EQC in June 2011 contains several typographical errors. The typos incorrectly reference the Arsenic Reduction Policy as section 4, rather than section 7. This error occurred during preparation of the final rule when the Arsenic Reduction Policy was moved from section 4 in the proposed rule to section 7 in the final toxics rule. DEQ has received several inquiries from the regulated community about these errors. |
| How would the proposed rule solve the problem? | The proposed rulemaking corrects the typos described above. |
| How will DEQ know the problem has been solved? | The problem will be solved once the revised rule is adopted by the EQC and filed with the Secretary of State. |
| **3. 340-041-0009 Bacteria Rule** |  |
| What problem is DEQ trying to solve? | The Bacteria Rule references Table 20. Since Table 20 will be removed from the Toxic Substances rule, DEQ proposes to delete the reference and instead reference the Toxic Substances rule. DEQ proposes not to insert a specific table name (i.e. Table 30) into the Bacteria Rule to reduce citation corrections in the future if the table name changes again. |
| How would the proposed rule solve the problem? | The proposed rulemaking corrects the typos described above. |
| How will DEQ know the problem has been solved? | The problem will be solved once the revised rule is adopted by the EQC and filed with the Secretary of State. |
| **4. 340-040-0020 Groundwater Quality Protection** | |
| What problem is DEQ trying to solve? | Table 20 is referenced in the Groundwater Quality Protection rules. Since Table 20 will be removed from the Toxic Substances rule, DEQ proposes to delete the reference and instead reference the Toxic Substances rule. DEQ proposes not to insert a specific table name (i.e. Table 30) into the Groundwater Quality Rule to reduce citation corrections in the future if the table name changes again.  Additionally, there is a citation to Division 41 which no longer exists. The correct reference should be to the antidegradation policy. |
| How would the proposed rule solve the problem? | The proposed rulemaking corrects the typos described above. |
| How will DEQ know the problem has been solved? | The problem will be solved once the revised rule is adopted by the EQC and filed with the Secretary of State. |
| **5. 340-040-0080 Numerical Groundwater Quality Reference Levels and Guidance Levels** | |
| What problem is DEQ trying to solve? | Table 20 is referenced in the Numerical Groundwater Quality Reference Levels and Guidance Levels rules. Since Table 20 will be removed from the Toxic Substances rule, DEQ proposes to delete the reference and instead reference the Toxic Substances rule. DEQ proposes not to insert a specific table name (i.e. Table 30) into this rule to reduce citation corrections in the future if the table name changes again. |
| How would the proposed rule solve the problem? | The proposed rulemaking corrects the typos described above. |
| How will DEQ know the problem has been solved? | The problem will be solved once the revised rule is adopted by the EQC and filed with the Secretary of State. |
| ***Corrections and Clarifications to Nonpoint Source Regulations*** | |
| **1. OAR 340-041-0007(5)** | |
| What problem is DEQ trying to solve? | Section (5) of the Statewide Narrative Criteria states in large part that logging and forest management activities must not cause violation of water quality standards, and that forest operations conducted in good faith compliance with best management practices and control measures established under the Forest Practice Act are generally deemed not to cause violations of water quality standards as provided in ORS 527.770. The rule notes that forest operations are subject to load allocations established under ORS 468B.110 and OAR Division 340-042 to the extent needed to implement the federal Clean Water Act. This provision is similar in form and substance to other nonpoint source provisions successfully challenged in NWEA v. EPA (U.S. District Court, 2012). If this provision is not repealed, the court’s decision would require EPA to review this provision as a water quality standard.  After discussions with EPA and major stakeholders, DEQ believes removal of this provision from Division 41 is preferable.  Accordingly, DEQ has agreed to commence rulemaking and recommend removal of this provision to the EQC. DEQ does not believe that the provision creates authority or obligations not already required by state and federal law. Further, this provision duplicates and may cause confusion regarding the statutory requirements contained in the Oregon Forest Practices Act. |
| How would the proposed rule solve the problem? | The proposed rulemaking eliminates the need for EPA to review this provision as a water quality standard and eliminates the potential confusion where present. |
| How will DEQ know the problem has been solved? | The problem will be solved once the revised rule is adopted by the EQC and filed with the Secretary of State. |
| **2. 340-041-0028(12) Implementation of the Temperature Criteria** | |
| What problem is DEQ trying to solve? | Subsections (e) and (f) of OAR 340-041-0028(12) provide that forestry and agriculture operations on state and private lands are deemed to be in compliance with water quality criteria for temperature if they are in compliance with Forest Practices Act and Agricultural Water Quality Management Act requirements. The provision also states DEQ will work with the Oregon Departments of Forestry and Agriculture to revise their programs in order to attain water quality standards. Subsection (g) includes similar provisions for agriculture and forestry on federal lands, except implementation of water quality restoration plans, best management practices and aquatic conservation strategies by federal Designated Management Agencies are deemed in compliance with the water quality standard for temperature. OAR 340-041-0028(12)(h)(D) states that a nonpoint source complying with an approved temperature management plan is deemed in compliance with the water quality criteria for temperature.  These provisions were successfully challenged in the U.S. District Court (NWEA v. EPA).  If these provisions are not repealed, the court’s decision would require EPA to review these provisions as water quality standards.  After discussions with EPA and major stakeholders, DEQ believes removal of these provisions from Division 41 is preferable.  Accordingly, DEQ has agreed to commence rulemaking and recommend removal of the provisions to the EQC.  DEQ does not believe these provisions create additional authority or obligations not already provided by state or federal law.  Further, these provisions duplicate and may cause confusion regarding the statutory requirements contained in the Oregon Forest Practices Act and the Agriculture Water Quality Management Act. |
| How would the proposed rule solve the problem? | The proposed rulemaking eliminates the need for EPA to review these provisions as water quality standards and eliminates the potential confusion where present. |
| How will DEQ know the problem has been solved? | The problem will be solved once the revised rule is adopted by the EQC and filed with the Secretary of State. |
| **3. 340-041-0061 Other Implementation of Water Quality Criteria** | |
| What problem is DEQ trying to solve? | Subsections (10), (11) and (12) of OAR 340-041-0061 are nearly identical to OAR 340-041-0028(12)(e), (f) and (g) discussed above. The primary difference is that the rules discussed above apply specifically to temperature criteria, where as the provision in -0061 apply to all other water quality standards.  These provisions were successfully challenged in the U.S. District Court (NWEA v. EPA).  If these provisions are not repealed, the court’s decision would require EPA to review these provisions as water quality standards.  After discussions with EPA and major stakeholders, DEQ believes removal of these provisions from Division 41 is preferable.  Accordingly, DEQ has agreed to commence rulemaking and recommend removal of the provisions to the EQC.  DEQ does not believe that these provisions create additional authority or obligations not already provided in state and federal law. Further, these provisions duplicate and may cause confusion regarding the statutory requirements contained in the Oregon Forest Practices Act, and the Agriculture Water Quality Management Act. |
| How would the proposed rule solve the problem? | The proposed rulemaking eliminates the need for EPA to review these provisions as water quality standards and eliminates the potential confusion where present. |
| How will DEQ know the problem has been solved? | The problem will be solved once the revised rule is adopted by the EQC and filed with the Secretary of State. |

Request for other options

During the public comment period, DEQ requested public comment on whether to consider other options for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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| **Considerations** - optional |

Information in this section originates with the Considerations worksheet. Delete this section if the team decides it does not want to use it.

Enter title here

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| **Freeform title** - optional |

The rule design team may adapt the main and subsection titles to the rulemaking. If the other sections adequately address the situation, delete this section.

Enter freeform title

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| **Federal relationship** |

For proposals that address numerous issues, the rule design team may use one of the methods under the Statement of Need section if it clarifies how this section applies to the disparate elements of this rulemaking. Delete this box after the team has settled on a method.

*"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

[**OPTION 1** – verbatim or by reference]

The proposed rule adopts the federal requirement Choose an item.. [ENTER THE NAME OF THE REQUIREMENT, ITS CITATION AND A BRIEF DESCRIPTION.] Enter text here.

[**OPTION 2**– in addition to federal requirements]

DEQ determined this rule proposal is “in addition to federal requirements” as required under [ORS 468A.327(1)(a)](http://www.oregonlaws.org/ors/468A.327) and [OAR 340-011-0029(1)(a)](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_011.html).

[EXPAND ON HOW AND WHY THE PROPOSED RULES ARE DIFFERENT FROM THE FEDERAL REQUIREMENTS.] [EXAMPLES: address science applicable to Oregon, incorporate technological advances, protect public health, protect environment, address administrative issues or address economic concerns] Enter text here

What alternatives did DEQ consider, if any?

[DESCRIBE WHY DEQ DID NOT PURSUE THESE ALTERNATIVES] Enter text here

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| Rules affected, authorities, supporting documents |

Lead divisionProgram or activity

Enter text here Enter text here

[**?**](http://deqsps/programs/rulemaking/qcards/0-RuleBasics.pptx) Chapter 340 action

Recommendation Division Rule Title SIP/Land use\*

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\* SIP – This rule is part of the State Implementation Plan.

\* Land use – DEQ State Agency Coordination Program considers this rule, program or activity is a land use program.

Statutory authority

ORS 468.020, 468.065, [ENTER CITATIONS] Enter here

Other authority🞂

ORS [ENTER CITATIONS] Enter here

Statute implemented Legislation Year

ORS [ENTER CITATIONS] Enter here [ENTER BILL #] Enter here yyyy

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

[BRIEFLY DESCRIBE THE PRINCIPAL DOCUMENTS, REPORTS OR STUDIES RELIED ON TO DEVELOP THIS PROPOSAL. INCLUDE THE LOCATION WHERE THE DOCUMENTS ARE AVAILABLE FOR PUBLIC INSPECTION. THE LIST MAY BE ABBREVIATED IF THE TEAM IDENTIFIES THE LOCATION OF THE COMPLETE LIST.]

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| **Document title** | **Document location** |
| Stipulated Order on Nonpoint Source and Endangered Species Act Remedies | N/A |
| Agreement Between Oregon Department of Environmental Quality And Northwest Environmental Advocates Relating to OAR 340-041-0007(5) | N/A |

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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) |

Statement of Cost of Compliance

1. Impacts on general public

[CONSIDER BOTH POSITIVE AND NEGATIVE IN A BRIEF DESCRIPTION OF THE PROJECTED FISCAL AND ECONOMIC IMPACTS AND COSTS OF COMPLIANCE ON THE GENERAL PUBLIC.]

**Corrections and Clarifications to Toxics Regulations**

DEQ does not expect that the general public will incur direct or indirect fiscal or economic impacts as a result of the proposed revisions to the toxics rule. The general public is not directly regulated under the Clean Water Act. The revisions proposed in this rulemaking correct typographical errors associated with the aquatic life criteria and human health criteria adopted by the EQC in 2004 and 2011, respectively, and responds to the regulatory consequences of EPA’s approval and disapproval actions associated with the 2004 aquatic life criteria.

DEQ anticipates the changes to the toxics rule will very likely provide a benefit to members of the public by clarifying which standards are effective and combining effective toxics criteria to protect aquatic life into one table (i.e. Table 30), rather than distributed among three tables (i.e. Table 20, Table 33A, and Table 33B).

**Corrections and Clarifications to Nonpoint Source Regulations**

DEQ does not expect that the general public will incur direct or indirect fiscal or economic impacts as a result of the proposed revisions to the water quality standards about nonpoint sources. Since the revisions proposed in this rulemaking do not change the way nonpoint sources comply with water quality standards, DEQ expects no economic impact to the general public.

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

[CONSIDER BOTH POSITIVE AND NEGATIVE IN A BRIEF DESCRIPTION OF THE PROJECTED FISCAL AND ECONOMIC IMPACTS AND COSTS OF COMPLIANCE ON SMALL BUSINESSES. IT IS OK TO REFERENCE 1. ABOVE IF THE TEXT WOULD BE IDENTICAL. ]

**Corrections and Clarifications to Toxics Regulations**

DEQ does not expect small businesses to be affected by these rule revisions. Very few small businesses are directly subject to toxics water quality criteria because most small businesses do not directly discharge wastewater to a waterbody. For those businesses that do discharge to a waterbody or are subject to pretreatment requirements where the business discharges to a municipal wastewater facility, the proposed changes in this rulemaking do not impose new requirements associated with the water quality toxics criteria. DEQ conducted an economic and fiscal impact assessment on revising or proposing new aquatic life criteria as part of the 2004 rulemaking. Instead, the revisions only provide corrections and clarifications to toxics regulations and tables and responds to the regulatory consequences of EPA disapproval and approval of aquatic life criteria submitted in 2004. However, some small businesses may need to conduct minor recordkeeping activities to correctly reference the effective toxics criteria following this rulemaking. DEQ expects the economic impact to be minimal.

DEQ anticipates these changes will very likely provide a benefit to small businesses subject to toxics water quality standards by clarifying which standards are effective and combining effective toxics criteria to protect aquatic life into one table (i.e. Table 30), rather than distributed among three tables (i.e. Table 20, Table 33A, and Table 33B).

Many farms and ranches fall under the category of small businesses. Agricultural activities are subject to Agricultural Water Quality Management (AgWQM) Area Plans and Rules that prohibit pollution (e.g. toxics affecting aquatic life and human health). Because these plans and rules already require and provide the mechanism for agriculture to meet the water quality standards and TMDL load allocations, and moreover, this rulemaking only proposes clarifications and corrections to toxics regulations and tables, DEQ does not anticipate that this proposed rulemaking will have direct or indirect fiscal impacts or effects on small farms and ranches.

**Corrections and Clarifications to Nonpoint Source Regulations**

DEQ does not expect that small businesses including farms and ranches will incur direct or indirect fiscal or economic impacts as a result of the proposed revisions to the water quality standards about nonpoint sources. Since the revisions proposed in this rulemaking do not change the way nonpoint sources comply with water quality standards, DEQ expects no economic impact to small businesses.

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| a) Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule. | **Corrections and Clarifications to Toxics Regulations**  As part of its recordkeeping, DEQ does not track whether any of the entities subject to the proposed rule revisions are small businesses, therefore it is difficult to estimate businesses potentially affected. The types of small businesses/industries holding wastewater permits include, but are not limited to: food processors, smelting/refining operations, timber processing, wood products manufacturing, pulp and paper, retail operations, seafood processors, seasonal fresh pack operations, and petroleum hydrocarbon clean-up operations.  According to the Oregon Farm Bureau, 97% (update if needed—this stat was from the human health toxics rulemaking) of Oregon farms and ranches fall under the category of small businesses based on the definition of small businesses being fifty or fewer employees. Other types of businesses that could be subject to this rulemaking include nurseries, dairy and beef producers, fruit growers, and other food producers, industrial, and small forest land owners. |
| b) Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule. | No additional activities are required for compliance with the proposed revisions. |
| c) Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule. | No additional resources are required for compliance with the proposed rules. |
| d) Describe how DEQ involved small businesses in developing this proposed rule. | **Corrections and Clarifications to Toxics Regulations**  DEQ included the Association of Oregon Industries (AOI) as part of the fiscal advisory committee that advised DEQ on the cost of compliance for this rulemaking for small businesses. AOI’s membership is comprised of large and small companies from all business classifications in Oregon. In addition, the Oregon Farm Bureau was also part of the fiscal advisory committee and represents many farms and ranches that are considered small businesses.  DEQ discussed the fiscal impact form and solicited input from these members during one workgroup meeting on January 24, 2013. This input [will be] incorporated into DEQ’s analysis.  **Corrections and Clarifications to Nonpoint Source Regulations**  DEQ included the Oregon Farm Bureau, Association of Small Woodland Owners, Oregon Cattlemen’s Association, as well as state and federal agencies that work with small farms and ranches as part of the fiscal advisory committee that advised DEQ on the cost of compliance for this rulemaking for small businesses.  DEQ discussed the fiscal impact form and solicited input from these members during one workgroup meeting on January 24, 2013. This input [will be] incorporated into DEQ’s analysis. |

3. Impact on large businesses (all businesses that are not small businesses under #2 above)

[CONSIDER BOTH POSITIVE AND NEGATIVE IN A BRIEF DESCRIPTION OF PROJECTED FISCAL AND ECONOMIC IMPACTS AND COSTS OF COMPLIANCE ON LARGE BUSINESSES. IT IS OK TO REFERENCE #1 OR #2 ABOVE IF THE TEXT WOULD BE IDENTICAL. ]

**Corrections and Clarifications to Toxics Regulations**

DEQ does not expect large businesses, such as pulp and paper or electronic processing types of industry, to incur significant direct or indirect fiscal or economic impacts as a result of the proposed revisions to the toxics rule, although most, if not all, large businesses that discharge to waterbodies are regulated under the Clean Water Act and are subject to requirements based on water quality standards for toxics. However, this rulemaking does not propose new water quality criteria for protection of aquatic life or human health. DEQ conducted an economic and fiscal impact assessment on revising or proposing new aquatic life criteria as part of the 2004 rulemaking. Instead, this rulemaking proposes to correct typographical errors associated with the aquatic life and human health criteria adopted by the EQC in 2004 and 2011, respectively, and responds to the regulatory consequences of EPA’s approval and disapproval actions associated with the 2004 aquatic life criteria. However, some large businesses may need to conduct minor recordkeeping activities to correctly reference the effective toxics criteria following this rulemaking. DEQ expects the economic impact to be minimal.

DEQ anticipates these changes will very likely provide a benefit to large businesses subject to requirements based on toxics standards by clarifying which standards are effective and combining effective toxics criteria to protect aquatic life into one table (i.e. Table 30), rather than distributed among three tables (i.e. Table 20, Table 33A, and Table 33B).

**Corrections and Clarifications to Nonpoint Source Regulations**

DEQ does not expect large businesses that are considered nonpoint sources will incur direct or indirect fiscal or economic impacts as a result of the proposed revisions to the water quality standards about nonpoint sources. Since the revisions proposed in this rulemaking do not change the way nonpoint sources comply with water quality standards, DEQ expects no economic impact to large businesses that are considered nonpoint sources.

4. Impact on local government other than DEQ

[CONSIDER BOTH POSITIVE AND NEGATIVE IN A BRIEF DESCRIPTION OF THE PROJECTED FISCAL AND ECONOMIC IMPACTS AND COSTS OF COMPLIANCE ON STATE AGENCIES. IT IS OK TO REFERENCE #1, 2 OR 3 ABOVE IF THE TEXT WOULD BE IDENTICAL.]

**Corrections and Clarifications to Toxics Regulations**

DEQ does not expect local governments, such as municipal wastewater treatment facilities (i.e. domestic facilities or Publicly Owned Treatment Works), to incur significant direct or indirect fiscal or economic impacts as a result of the proposed revisions to the toxics rule, although most, if not all, major domestic sources are subject to requirements based on water quality standards for toxics. Generally, minor domestic sources (average dry weather design flow of less than one million gallons per day (MGD)) have much reduced monitoring and permitting requirements than major domestic sources. This rulemaking does not propose new water quality criteria for protection of aquatic life or human health. DEQ conducted an economic and fiscal impact assessment on revising or proposing new aquatic life criteria as part of the 2004 rulemaking. Instead, this rulemaking proposes to correct typographical errors associated with the aquatic life and human health criteria adopted by the EQC in 2004 and 2011, respectively, and responds to the regulatory consequences of EPA’s approval and disapproval actions associated with the 2004 aquatic life criteria. However, some wastewater treatment facilities may need to conduct minor recordkeeping activities to correctly reference the effective toxics criteria following this rulemaking. DEQ expects the economic impact to be minimal.

DEQ anticipates these changes will very likely provide a benefit to local governments interested in toxics criteria, or subject to toxics standards by clarifying which standards are effective and combining effective toxics criteria to protect aquatic life into one table (i.e. Table 30), rather than distributed among three tables (i.e. Table 20, Table 33A, and Table 33B).

**Corrections and Clarifications to Nonpoint Source Regulations**

DEQ does not expect that local and federal government that are considered nonpoint sources other than DEQ will incur direct or indirect fiscal or economic impacts as a result of the proposed revisions to the water quality standards about nonpoint sources. Even though some of the local and federal governments are not MS4 communities and considered nonpoint sources, the revisions proposed in this rulemaking do not change the way nonpoint sources comply with water quality standards, and DEQ expects no economic impact to local and federal governments that are considered nonpoint sources.

5. Impact on DEQ

[CONSIDER BOTH POSITIVE AND NEGATIVE IN A BRIEF DESCRIPTION OF THE PROJECTED FISCAL AND ECONOMIC IMPACTS AND COSTS OF COMPLIANCE ON DEQ. IT IS OK TO REFERENCE 1, 2, 3 or 4 ABOVE IF THE TEXT WOULD BE IDENTICAL.]

**Corrections and Clarifications to Toxics Regulations**

DEQ does not expect that DEQ staff will incur significant direct or indirect fiscal or economic impacts as a result of the proposed revisions to the toxics rule. Although many DEQ programs use water quality criteria for toxics (e.g. water quality assessment, Total Maximum Daily Load program, NPDES permitting, groundwater rules, clean-up program, etc.), this rulemaking does not propose new water quality criteria for protection of aquatic life or human health. DEQ conducted an economic and fiscal impact assessment on revising or proposing new aquatic life criteria as part of the 2004 rulemaking. Instead, this rulemaking proposes to correct typographical errors associated with the aquatic life and human health criteria adopted by the EQC in 2004 and 2011, respectively, and responds to the regulatory consequences of EPA’s approval and disapproval actions associated with the 2004 aquatic life criteria. However, some DEQ programs may need to conduct minor recordkeeping activities to correctly reference effective toxics criteria following this rulemaking. DEQ expects the economic impact to be minimal.

DEQ anticipates these changes will very likely provide a benefit to DEQ staff by clarifying which standards are effective and combining effective toxics criteria to protect aquatic life into one table (i.e. Table 30), rather than distributed among three tables (i.e. Table 20, Table 33A, and Table 33B).

**Corrections and Clarifications to Nonpoint Source Regulations**

DEQ does not expect that DEQ will incur direct or indirect fiscal or economic impacts as a result of the proposed revisions to the water quality standards about nonpoint sources. Since the revisions proposed in this rulemaking do not change the way nonpoint sources comply with water quality standards, DEQ expects no economic impact to DEQ staff and programs.

Documents relied on for fiscal and economic impact

1. [EPA Action Letter on DEQ 2004 Aquatic Life Criteria---to be inserted once received]
2. Stipulated Order on Nonpoint Source and Endangered Species Act Remedies
3. Agreement Between Oregon Department of Environmental Quality And Northwest Environmental Advocates Relating to OAR 340-041-0007(5)

Advisory committee

**[OPTION 1]**

DEQ appointed an advisory committee and considered the committee’s recommendations on this fiscal and economic impact statement. In compliance with [ORS 183.333](http://www.leg.state.or.us/ors/183.html), DEQ asked for the committee’s recommendations on:

* Whether the proposed rules would have a fiscal impact,
* The extent of the impact, and
* Whether the proposed rules would have a significant impact on small businesses and compliance with [ORS 183.540](http://www.leg.state.or.us/ors/183.html).

[ADD ANY SPECIFICS ABOUT THE COMMITTEE’S INVOLVEMENT WITH THE FISCAL AND ECONOMIC IMPACT STATEMENT] Enter text

**[OPTION 2]**

DEQ did not appoint an advisory committee. [INCLUDE A BRIEF STATEMENT DESCRIBING WHY DEQ DID NOT CONVENE AN ADVISORY COMMITTEE.] Enter text

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. [EXAMPLE OF QUALIFIER] The proposed fee affects only manufacturers of electronic devices sold in or into Oregon.

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| --- |
| Fees |

INSERT PROPOSAL.FEE.3.0~ here.

|  |
| --- |
| Land use |

For proposals that address numerous issues, the rule design team may use one of the methods under the Statement of Need section if it clarifies how this section applies to the disparate elements of this rulemaking. Delete this box after the team has settled on a method.

*“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

[APPLIES TO THE PROPOSED RULES THAT **DO NOT** **AFFECT** LAND-USE PROGRAMS OR ACTIONS. ADJUST TO FIT SITUATION.]

DEQ determined that the proposed rules identified 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.

[APPLIES TO THOSE PROPOSED RULES THAT **AFFECT** LAND-USE PROGRAMS OR ACTIONS. ADJUST TO FIT SITUATION.]

DEQ determined that the proposed rules identified under the ‘Rules affected, authorities, supporting documents’ section above **affect** [IDENTIFY EXISTING PROGRAM, RULE OR ACTIVITY], which is an existing rule, program or activity that is considered a land-use program in the DEQ State Agency Coordination Program.

[**OPTION 1**]DEQ’s statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules. [DESCRIBE BRIEFLY WHY IT IS ADEQUATE.] [EXAMPLE 1: 340-018-0040(1) - compliance with statewide planning goals achieved by ensuring compatibility with acknowledged comprehensive plans] [EXAMPLE 2: 340-018-0050(2)(a) - ensuring compatibility with acknowledged comprehensive plans may be accomplished through a Land Use Compatibility Statement.] Enter text here.

[**OPTION 2**]DEQ’s statewide goal compliance and local plan compatibility procedures do not cover the proposed rules. [DESCRIBE CRITERIA AND RATIONALE USED TO DETERMINE THE PROPOSED RULES ARE LAND-USE RULES.] Enter text here.

[POTENTIAL TEXT] DEQ reasonably expects the program, rules or actions to have Choose an item. effect on resources, objectives or areas in the planning goals. [PLEASE EXPLAIN] Enter text here.

[**OPTION 3**]The proposed rules are not subject to existing compliance and local plan compatibility procedures. To ensure compliance and compatibility, DEQ will [EXPLAIN NEW PROCEDURES DEQ WILL USE TO ENSURE COMPLIANCE AND COMPATIBILITY] Enter text here.

|  |
| --- |
| Stakeholder and public involvement |

Advisory committee

DEQ convened the [ENTER ADVISORY COMMITTTEE NAME] advisory committee on [DATE]. [DESCRIBE COMMITTEE CHARTER] Enter text here.

The ##-member committee included representatives from [GENERALLY DESCRIBE COMMITTEE MAKEUP.] The committee met ## times over ## months. The committee recommended that [SUMMARIZE RECOMMENDATION OR INVOLVEMENT AND LINK TO ANY FORMAL RECOMMENDATION.] The committee reviewed the fiscal impact statement, specifically impact on small businesses.

 EQC prior involvement

DEQ shared information about this rulemaking with the EQC at a facilitated hearing on mmm dd, yyyy, through an information item on the mmm dd, yyyy EQC agenda, and in the Director's Dialog mmm dd, yyyy.

Public notice

[ADAPT TENSE. USE “PLANS” FOR FUTURE TENSE.] The Notice of Proposed Rulemaking with Hearing [WITHOUT HEARING] for this proposed rulemaking will publish in the mmm dd, yyyy *Oregon Bulletin*. DEQ also:

* Posted notice on DEQ’s webpage <http://www.deq.state.or.us/regulations/proposedrules.htm> on mmm dd, yyyy.
* E-mailed notice to:
* #### interested parties through GovDelivery on mmm dd, yyyy.
* #### stakeholders on the [LIST OTHER MAILING LIST].
* ## key legislators required under [ORS 183.335](http://www.leg.state.or.us/ors/183.html) on mmm dd, yyyy. Key legislators included:
  + Name, Title, Committee
  + Name, Title, Committee
  + Name, Title, Committee
* Members of the advisory committee on mmm dd, yyyy.
* Mailed the notice by U.S. Postal Service to ## interested parties on mmm dd, yyyy.
* Sent notice to EPA on mmm dd, yyyy.
* Other

Public hearings

DEQ plans to hold one [ENTER NUMBER OF HEARINGS] public hearing. [OPTION]The hearing is accessible by:

Conference call: (###) ###-####

Webinar: (###) ###-#### Participant code: #####

Before taking public comment, DEQ will describe the rule proposal. The following table lists public hearing locations and participation:

| Public Hearings | | | | |
| --- | --- | --- | --- | --- |
| Hearing Date | Time | Location | Hearings Officer | |
|  |  |  | DEQ Staff |  |
|  |  |  |  |  |
|  | 3 pt |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

Close of public comment period

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