

Oregon Department of Environmental Quality

**December 13, 2013**

Notice of Proposed Rulemaking

**Incorporate Lane Regional Air Protection Agency Rules**

**Into State Implementation Plan:**

**Open Burning**

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| **Overview** |

Short summary

DEQ proposes to incorporate Lane Regional Air Protection Agency regulations for open burning into Oregon’s State Implementation Plan in Oregon Administrative Rule 340-200-0040. The open burning rules were adopted by the LRAPA Board of Directors in an effort to meet federal air quality standards for fine particulate matter, to bring LRAPA in line with state rules and to better coordinate with state and federal requirements. The changes to LRAPA’s regulations include:

* Clarify when and where small recreational fires such as patio fireplace could occur and identify acceptable fuels for these fires,
* Include Hazeldell and Siuslaw Rural Fire Protection Districts in the special open-burning control area at the districts’ request,
* Allow daily end time on burn days to be set earlier than sunset,
* Restrict the open burning season in the outlying areas of Lane County, and
* Correct the meaning of the LRAPA acronym to Lane Regional Air Protection Agency.

Brief history

LRAPA, in consultation with DEQ and the U.S. Environmental Protection Agency, is responsible for ensuring that Lane County communities comply with federal air quality health standards, including enacting plans to restore healthy air quality in any area violating standards. LRAPA conducts air monitoring, permitting and compliance, inspection and enforcement, and regulates open burning and asbestos abatement throughout Lane County. It also has a woodstove advisory program, an open burning advisory and conducts special projects focused on air quality. The agency is funded from local dues from Lane County and the cities of Lane County, industrial and other permitting fees, and LRAPA coordinates with DEQ to obtain EPA funding and state general funds.

The open burning rules explained in this document were adopted by the LRAPA Board of Directors on March 14, 2008 and have been in effect in Lane County since their adoption. The Environmental Quality Commission and DEQ have oversight authority to ensure LRAPA meets Clean Air Act requirements. The State Implementation Plan is the State of Oregon Clean Air Act Implementation Plan as adopted by EQC under OAR 340-200-0040 and approved by EPA. The EQC’s role is to review LRAPA rules to determine if they are in compliance with state law and the Clean Air Act, approve those rules if they comply, and submit approved rules to EPA for federal approval as State Implementation Plan amendments. Though this is not the case here, an exception to this requirement allows the DEQ to approve any LRAPA rules that are verbatim restatements of rules that the EQC has already approved.

Typically, DEQ submits LRAPA rules to the EQC for incorporation into the State Implementation Plan upon adoption by the LRAPA Board. However, in this case, DEQ determined that the public notice process held jointly by DEQ and LRAPA several years ago did not meet requirements for State Implementation Plan rules, which are above and beyond requirements for normal rulemaking. Performing rulemaking is resource intensive and DEQ was unable to perform the additional public notice requirements until now.

Regulated parties

The proposed rules affect residential open burning in Lane County.

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| **Stringency Review and Authorization** |

*Insert PDF of signed letter*

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| **Statement of need** |

What problem is DEQ trying to solve?

LRAPA adopted changes to its open burning rules in an effort to meet federal particulate standards for PM2.5. In order for LRAPA and the state to maintain compliance with the Clean Air Act, the EQC must review LRAPA’s rules and, if the EQC concludes that the rules comply with state law and the Clean Air Act, approve the rules and submit them to the EPA for approval and incorporation, as appropriate, into the federally-approved State Implementation Plan

Lane County records the highest levels of PM2.5 from November through February. LRAPA adopted changes to its Title 47 open burning rules to prohibit all open burning within the Eugene-Springfield maintenance area during this period to reduce the potential that areas of Lane County could exceed federal particulate standards for PM2.5. LRAPA’s old open burning rules did not adequately address small recreational fires or accommodate the Hazeldell and Siuslaw Rural Fire Protection Districts request to be included in the special open-burning control area. Some definitions were not clear or no longer met the current conditions.

Open burning and backyard burning are major sources of air pollution complaints received by LRAPA and result in a significant portion of the monthly LRAPA enforcement cases. The numbers of open burning or backyard burning complaints have increased over time. Open burning complaints were consistently less than 100 per year during 1990-2000. Open burning complaints steadily increased, averaging over 300 per year during 2007-2008.

How would the proposed rule solve the problem?

LRAPA’s open burning rules provide a consistent basis for complaint response and help prevent public nuisances and violations of PM2.5 National Ambient Air Quality Standards in Lane County.

How will DEQ know the problem has been solved?

The open burning control program will continue to require diligent implementation by LRAPA in order to minimize air pollution impacts and nuisances. Indicators of the success of this program will be attainment and maintenance of PM10 and PM2.5 air quality health standards, reduced impacts on neighbors, and fewer public complaints.

Upon EQC adoption, DEQ would submit the rules to EPA to update the federally-approved State Implementation Plan. DEQ will know the goals of this rulemaking have been addressed when EPA reviews and approves the changes to the State Implementation Plan.

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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| Rules affected, authorities, supporting documents |

Lead divisionProgram or activity

Air Quality Division State Implementation Plan

Chapter 340 action

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| Amend | OAR 340-200-0040 |

Statutory authority

ORS 468.020, 468.065, 468A.035, 468A.460, 468A.135

Other authority

LRAPA Title 13 General Duties and Powers of Board and Director

LRAPA Title 14 Rules of Practice and Procedure

Statute implemented Legislation

ORS 468A.035, 468A.135

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

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| **Document title** | **Document location** |
| LRAPA Title 47 Open burning rules adopted March 14, 2008 | <http://www.lrapa.org/rules_and_regulations/downloads/Title_47_03-14-08.pdf> |
| Redline/strikeout version of the LRAPA Title 47 Open burning rules | <http://www.lrapa.org/downloads/publications/ISR_Redlined_Rules.pdf> |
| LRAPA Board of Directors Meeting, March 14, 2008, Item 4: Adoption of Title 47 amendments | DEQ Headquarters  811 SW 6th Avenue  Portland, OR 97204 |
| Oregon Administrative Rules for Open Burning - Chapter 340 Division 264 | <http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_264.html> |
| LRAPA Board of Directors Meeting, October 9, 2007, Item 7: Adoption of Title 47 amendments | DEQ Headquarters  811 SW 6th Avenue  Portland, OR 97204 |
| LRAPA Citizens Advisory Committee Meeting, May 29, 2007 | DEQ Headquarters  811 SW 6th Avenue  Portland, OR 97204 |

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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

DEQ has determined that the proposed rules have no significant fiscal or economic impact. This proposal involves minor clarifications and updates that primarily affect residential open burning in Lane County.

In 2008, LRAPA’s original analysis determined that the rule amendments have no significant fiscal or economic impact. In 2013, DEQ in consultation with LRAPA, reevaluated the proposed rules and determined LRAPA’s original analysis is reasonable and still correct in light of events that have occurred since 2008.

Statement of Cost of Compliance

Impacts on general public

There is no significant fiscal or economic impact on the general public.

Impact on other government entities other than DEQ

1. Local governments No significant impact, including LRAPA
2. State agencies No significant impact

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

There is no significant fiscal or economic impact on DEQ.

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

This proposal primarily affects residential open burning in Lane County and would have no significant fiscal or economic impact on large businesses.

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

This proposal primarily affects residential open burning in Lane County and would have no significant fiscal or economic impact on 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. | This proposal does not affect small businesses. |
| b) Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule. | This proposal does not affect small businesses; therefore, no additional activities apply to small businesses. |
| c) Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule. | This proposal does not affect small businesses; therefore, small businesses do not need additional resources to comply. |
| d) Describe how DEQ involved small businesses in developing this proposed rule. | This proposal does not affect small businesses; therefore, small businesses were not involved in developing this proposal. |

Documents relied on for fiscal and economic impact

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| **Document title** | **Document location** |
| LRAPA Title 47 Open burning rules adopted March 14, 2008 | <http://www.lrapa.org/rules_and_regulations/downloads/Title_47_03-14-08.pdf> |
| Redline/strikeout version of the LRAPA Title 47 Open burning rules | <http://www.lrapa.org/downloads/publications/ISR_Redlined_Rules.pdf> |
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Advisory committee

DEQ did not appoint an advisory committee. When LRAPA developed its rule amendments in 2007, it consulted the Citizens Advisory Committee and considered the committee’s recommendations on fiscal and economic impacts of the rule. DEQ reviewed the committee’s findings, as well as the documents listed above, in light of events that have occurred since 2008. DEQ has determined that the proposed rules have no significant fiscal or economic impact and that convening a fiscal advisory committee would be an extraneous use of DEQ resources.

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. This proposal involves minor clarifications and updates that primarily affect residential open burning in Lane County.

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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..."* [ORS 183.332](http://www.oregonlaws.org/ors/183.332)

Relationship to federal requirements

This section complies with [OAR 340-011-0029](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_011.html) and [ORS 468A.327](http://www.oregonlaws.org/ors/468A.327) to clearly identify the relationship between the proposed rules and applicable federal requirements.

The proposed rules are “in addition to federal requirements.”

The proposed rules help to reduce the potential that areas of Lane County could exceed federal particulate standards for PM2.5. There are no federal rules applicable to open burning. The LRAPA open burning rules are an element of the State Implementation Plan that is a federally approved and enforceable strategy outlining how Oregon will meet federal air quality standards to protect public health and the environment.

What alternatives did DEQ consider if any?

A total ban on open burning was not considered feasible in an area as diverse as Lane County. Open burning is recognized as an important tool for disposal of yard debris and reducing overall fire danger, especially on larger acreages in more rural areas of Lane County.

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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.oregonlaws.org/ors/197.180), [OAR 018-0010](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_018.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. The proposed rules are consistent with land use in applicable Lane County land use plans.

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| Stakeholder and public involvement |

Advisory committee

DEQ did not convene an advisory committee; however, DEQ is providing a summary of LRAPA’s consultation with the Citizens Advisory Committee.

LRAPA convened the Citizens Advisory Committee on May 29, 2007 to discuss the proposed open burning rule changes. This a standing advisory committee required under ORS 468A.130 to advise the LRAPA Board of Directors on methods and procedures for the protection of public health.

The 13-member committee included persons within the region who represent public health, agriculture, industry, planning, fire suppression, and the general public. The committee met one time to consider the open burning rule changes. The committee considered the $4.00/cubic yard fee LRAPA charges for open burning letter permits, but recognized that the program operates at a loss and a fee reduction would not be feasible. The committee recommended that the Board adopt the recommended rule changes with minimal revisions.

Roster

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| Name | Representing |
| Russ Ayers, Chair | Large Industry |
| Amy Peccia, Member | Large Industry |
| Earl Koenig, Member | General Public |
| Diana Bollenbaugh, Member | Small Industry |
| Chuck Gottfried, Member | Agriculture |
| Larry Dunlap, Member | Public Health |
| Maurie Denner, Member | General Public |
| Gery Vander Meer, Member | General Public |
| Paul Engelking, Member | General Public |
| Link Smith, Member | Fire Suppression |
| Don Holkestad (resigned) , Member | General Public |
| Hugh Larkin, Member | General Public |
| John Tamulonis, Member | Public Planning |

 EQC prior involvement

DEQ shares general rulemaking information with EQC through the annual DEQ Rulemaking Plan review and monthly status report. DEQ did not present additional information specific to this proposed rule revision beyond the annual rulemaking plan and the monthly rulemaking report.

Public notice

The January 2014[*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.oregon.gov/deq/RulesandRegulations/Pages/2013/LRAPA.aspx> on Dec. 13, 2013.
* E-mailed notice on Dec. 13, 2013 to:
* Approximately #### interested parties through GovDelivery
* About 80 interested parties provided to DEQ by LRAPA
* 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 LRAPA Citizens 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.
* Published legal advertisement in the following newspapers on Dec. 13, 2013:
  + - Oregonian
    - Register Guard
    - Beacon
    - Cottage Grove Sentinel

Public hearings

DEQ plans to hold one public hearing. The table below includes information about how to participate in the public hearings. LRAPA acted as DEQ’s hearings officer on behalf of the Environmental Quality Commission for public comment on the rule amendments. DEQ’s authorization is included in the letter to LRAPA in the Stringency Review and Authorization section of this document.

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), 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 Jan. 16, 2014 at 5:00 p.m.